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**THE  
COMMERCIAL LAWS OF THE WORLD**

**VOLUME XX  
DENMARK AND SCANDINAVIA**

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#### AMERICAN EDITION

THE COMMERCIAL LAWS OF THE WORLD, EDITED BY THE HON. SIR THOMAS EDWARD SCRUTTON, JUDGE OF THE KING'S BENCH DIVISION OF THE HIGH COURT OF JUSTICE, ENGLAND (CONSULTING EDITOR), WILLIAM BOWSTEAD, OF THE MIDDLE TEMPLE, BARRISTER AT LAW, LONDON (GENERAL EDITOR), CHARLES HENRY HUBERICH, J. U. D. (HEIDELBERG), D. C. L. (YALE), LL. D. (MELBOURNE), COUNSELLOR AT LAW, BERLIN AND PARIS, SOMETIME PROFESSOR OF LAW IN THE LAW SCHOOL OF THE LELAND STANFORD JUNIOR UNIVERSITY (CALIFORNIA)

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BERLIN (SW. 19)  
R. v. DECKER'S VERLAG  
G. SCHENCK  
KÖNIGLICHER HOFBUCHHÄNDLER

121

# THE COMMERCIAL LAWS OF THE WORLD

COMPRISING

THE MERCANTILE, BILLS OF EXCHANGE, BANKRUPTCY  
AND MARITIME LAWS OF ALL CIVILISED NATIONS

TOGETHER WITH

COMMENTARIES ON CIVIL PROCEDURE,  
CONSTITUTION OF THE COURTS, AND  
TRADE CUSTOMS

IN THE ORIGINAL LANGUAGES INTERLEAVED  
WITH AN ENGLISH TRANSLATION

*CONTRIBUTED BY*

*NUMEROUS EMINENT SPECIALISTS OF ALL NATIONS*

## BRITISH EDITION

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**LONDON**  
**SWEET & MAXWELL LIMITED**  
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1911  
V.20



**DEN THE COMMERCIAL  
DANSKE HANDELSRET AND BANKRUPTCY LAW  
OG KONKURSRET OF DENMARK**

AF

BY

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## Indledning.

Der findes ikke nogen almindelig dansk Handelslovbog.

Den danske Handelsret falder derfor i Hovedsagen sammen med almindelig, dansk Formueret, saaledes som denne har udviklet sig paa Grundlag af „Christian den 5tes Danske Lov“ af 1683, specielle Love, Domstolenes Praxis og videnskabelig Bearbejdelse.

En særlig „handelsretlig“ Karakter faae Retsreglerne kun, hvor det gælder Losning af Retsspørgsmaal, som udelukkende fremkaldes af det egentlige Handels-samkvem, men ikke af det almindelige økonomiske Samliv overhovedet. Disse handelsmæssige Retsspørgsmaal løses da enten gennem specielle Lovregler eller Usancer eller gennem mere eller mindre frie Betragtninger over, hvilken Regel de handelsmæssige Forhold kræve.

Christian den 5tes Danske Lov (af 1683) eller, som den almindelig kaldes „Danske Lov“, var en for sin Tid værdifuld Lovkodifikation, der i 6 Bøger behandlede 1) Processen, 2) Religionen og Gejstligheden, 3) personretlige, næringsretlige og landboretlige Spørgsmaal, 4) Søren, 5) Formueretten og 6) Strafferetten.

Det meste af dens Indhold er successivt ændret ved senere Love og Praxis; men en Del af den gælder dog endnu, derunder de vigtigste, formueretlige Hoved-principer, hvoraf særlig skal fremhæves, at efter dansk Ret er ethvert bestemt og endeligt Løfte retlig forbindende, uden at det behøver at foreligge i nogen bestemt Form. Bl. a. er saaledes det mundtlige Løfte ligesaa fuldt forbindende som det skriftlige.

Det 17de og det meste af det 18de Aarhundrede ere i Danmark som andetsteds „Regalismens“, „Merkantilismens“ og „Lavsvæsnets“ Tidsalder; men i Slutningen af det 18de Aarhundrede begynde Frihandelsprinciper at bryde igennem, og da navnlig ved de to Forordninger af 1788, der fuldstændig frigav Korn- og Kreatur-handlen, og endnu mere ved Toldforordningen af 1 Febr. 1797.

Den danske Grundlov af 5 Juni 1849, hvorved Regeringsformen ændredes fra Enevælde til konstitutionelt Monarki, gik videre i samme Retning, idet den i sin § 88 (gentaget i den nugældende Grundlov af 28 Juli 1866 § 83) bestemte, at „alle Indskrænkninger i den fri og lige Adgang til Erhverv, som ikke ere begrundede i det almene Vel, skal hæves ved Lov“, og paa dette Grundlag er den endnu gældende Næringslov af 29 Dec. 1857 givet.

Medens et i 1870 paabegyndt Forsøg paa at tilvejebringe en almindelig dansk Handelslovbog ikke har ført til noget Resultat, er der i øvrigt af dansk Lovgivning — og da særlig efter Grundlovens Givelse — udfoldet en ret betydelig Virksomhed paa det Omraade, der omspændes af nærværende Værk.

Blandt herhen hørende Love, der endnu helt eller delvis ere i Kraft, ere følgende de vigtigste:



## Introduction.

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Denmark has no general Commercial Code.

The Danish commercial law therefore, in the main, depends upon the Danish property law, as it has been developed on the basis of the "Danish Code of Christian V" of 1683, special laws, the practice of the tribunals and learned works.

The judicial regulations have a special commercial character only when the solution of such legal questions are concerned as exclusively arise out of commercial intercourse properly so-called, but not out of economic intercourse in general. These commercial legal questions are solved either by special laws or customs, or by means of more or less free speculations as to how commercial intercourse should be regulated.

The Danish Code of Christian V (of 1683) or, as it is generally called, "Danish Law", was for its time a valuable code, which in 6 books dealt with: 1. the procedure; — 2. religion and the clergy; — 3. questions relating to the rights of persons, trade and agriculture; — 4. the maritime law; — 5. the property law and 6. the penal law.

The greater portion of its contents has in course of time been altered by later laws and practice; but part of it is still in force, and notably, the most important principles in relation to property. Of these principles should especially be mentioned the one that according to Danish law every definite and final promise involves a legal liability without its having any definite form. Consequently a promise made verbally is quite as much an undertaking involving legal liability as one made in writing.

The 17th and the greater part of the 18th century were in Denmark as in other countries the period of regalia, mercantile privilege and the guilds; but towards the end of the 18th century free trade principles began to become prevalent, and this was especially the case in the two Ordinances of 1788, which gave entire liberty for the trade in corn and cattle, and still more so in the Customs Ordinance of the 1st February 1797.

The Danish Constitution of 5th June 1849, which altered the form of Government from an absolute monarchy into a constitutional monarchy, went further in the same direction, enacting in its § 88 (repeated in § 83 of the Constitution of 28th July 1866 which is now in force) that "all restrictions on freedom and equality as to acquisition of property which are not based on the general welfare of the people shall be abolished by law", and on this basis has been enacted the Trades Law of 29th December 1857, which is still in force.

From 1870 efforts were made to create a general Danish Code of Commerce, but they resulted in nothing. Otherwise Danish legislation — especially since the enactment of the Constitution now in force — has been very active in the sphere of the subjects dealt with by the laws contained in this work.

Amongst laws belonging to this category, which in part or in their entirety are still in force, the following should be mentioned as the most important:

Fdg. af 9 Febr. 1798 vedrørende Gældsbreve.

Mægler-Fdgn. af 22 Dec. 1808.

Fdg. af 1 Juni 1832 ang. Forpligtelsen til at føre Handelsbøger.

Fdg. af 8 Juni 1839 ang. Fremmedes Handelsberettigelse.

Pl. af 27 Nov. 1839 (jvf. Fdg. af 13 Febr. 1775) ang. Forbud mod Omløben med Varer.

Lov af 15 Apr. 1854 ang. Handel med Kornvarer og Brød.

Lov af 29 Dec. 1857 om Haandværks- og Fabrikdrift samt Handel og Beværtning m. m. (almindelig kaldet „Næringsloven“) med Tillægslov af 23 Maj 1873.

Lov af 19 Febr. 1861 om Oprettelse af en Sø- og Handelsret i Kjöbenhavn.

Stempelloven af 19 Febr. 1861 med Tillægslove.

Lov af 24 Marts 1865 om Eftergørelse af Fotografier.

Almindelig borgerlig Straffelov af 10 Febr. 1866 med Tillægslove.

Lov af 23 Febr. 1866 om udvidet Næringsfrihed i Kjöbenhavns Omegn.

Lov af 6 Marts 1869 om Classelotteriets Ordning og Forbud mod andet Lottospil m. m.

Lov af 2 Juli 1870 indeholdende nogle nærmere Bestemmelser ang. Brændevinshandel.

Konkursloven af 25 Marts 1872 med Tillægslove.

Montloven af 23 Maj 1873.

Vexelloven af 7 Maj 1880.

Lov af 5 Apr. 1888 om Stempling af Guld- og Sølv-sager.

Postlov af 5 Apr. 1888 med Tillægslove.

Lov af 1 Marts 1889 om Handelsregistre, Firma og Prokura (almindelig kaldet „Firmaloven“), (der har afløst den ældre Firmalov af 23 Jan. 1862).

Lov af 11 Apr. 1890 om Beskyttelse for Varemærker med Tillægslove (hvilken Lov er traadt i Stedet for den ældre Varemærkelov af 2 Juli 1880).

Søloven af 1 Apr. 1892 med Tillægslove (jvf. i øvrigt Sørensen).

Patentloven af 13 Apr. 1894 med Tillægslove.

Lov af 27 Apr. 1894 om Straf for Brugen af urigtige Varebetegnelser.

Lov af 15 Febr. 1895 om danske Aktieselskaber paa Steder i Udlandet, hvor danske ikke ere undergivne Landets Jurisdiktion.

Lov af 10 Apr. 1895 indeholdende Forbud mod Kolportage med samt Salg og Udbydelse til Salg af Andele af udenlandske saakaldte Præmieobligationer. Cheekloven af 23 Apr. 1897.

Lov af 11 Maj 1897 om Telegrafer og Telefoner.

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Ordinance of 9th February 1798 concerning *notes of hand*.

Ord. concerning *brokers* of 22nd December 1808.

Ord. of 1st June 1832 concerning compulsory commercial *book-keeping*.

Ord. of 8th June 1839 concerning the *rights of foreigners as traders*.

Placard of 27th Nov. 1839 (see Ord. of 13th Feb. 1775) concerning the prohibition of trading as *hawkers and pedlars*.

Act of 15th April 1854 concerning trade in *corn and bread*.

Act of 29th Dec. 1857 concerning trades and factories as well as commerce and the catering trade etc. (generally called the "*Trades Act*") with a supplementary Act of 23rd May 1873.

Act of 19th Feb. 1861 concerning the establishment of a *Maritime and Commercial Tribunal in Copenhagen*.

The *Stamps Act* of 19th Feb. 1861 with supplementary Acts.

Act of 24th March 1865 concerning the right to *reproduce photographs*.

General civil *Penal Code* of 10th Feb. 1866, with supplementary Acts.

Act of 23rd Feb. 1866 concerning a greater *liberty of trading* in the surroundings of Copenhagen.

Act of 6th March 1869 concerning the *control of lotteries* and the prohibition of all lotto games etc.

Act of 2nd July 1870 containing a few details with regard to the *trade in spirits*.

The *Bankruptcy Act* of 25th March 1872 with supplementary Acts.

The *Coins Act* of 23rd May 1873.

The *Bills of Exchange Act* of 7th May 1880.

Act of 5th April 1888 concerning the *stamping of gold and silver wares*.

The *Postal Act* of 5th April 1888 with supplementary Acts.

Act of 1st March 1889 concerning registers of commerce, firms and proxies generally called the "*Firms Act*"), (which has replaced the previous Firms Act of 23rd Jan. 1862).

Act of 11th April 1890 concerning the protection of *trade marks* with supplementary Acts (which Act has replaced the previous Trade Marks Act of 2nd July 1880).

The *Maritime Act* of 1st April 1892 with supplementary Acts (see *infra* Maritime Law).

The *Patent Act* of 13th April 1894 with supplementary Acts.

Act of 27th April 1894 concerning penalties for the use of *false designations* of goods.

Act of 15th Feb. 1895 concerning *Danish limited companies* in places abroad where Danes are not subject to the jurisdiction of the foreign countries.

Act of 10th April 1895 containing prohibition of canvassing, offering and selling parts of foreign so-called *premium bonds*.

The *Cheques Act* of 23rd April 1897.

Act of 11th May 1897 concerning *telegraphs and telephones*.

Act of 26th March 1898 concerning the trade in *fertilizers and feeding-stuffs*.

Act of 26th March 1898 concerning the liability to compensate for damages arising in railway traffic, cf. Act of 15th May 1903 concerning the *tariffs of the State railroads* etc.

Lov af 7 Apr. 1899 ang. Sprængstoffer.

Lov af 29 Marts 1904 om Forfatterret og Kunstnerret.

Lov af 1 Apr. 1905 om Beskyttelse for Monstre.

Lov af 14 Apr. 1905 om Tvangsakkord udenfor Konkurs og om Udvidelse af Adgangen til Tvangsakkord under Konkurs.

Lov af 30 Marts 1906 om Handel med samt Ind- og Udførsel af Landbrugsprodukter<sup>1)</sup>.

Lov af 6 Apr. 1906 om Oprettelse af „Kongeriget Danmarks Hypotekbank“.

Lov af 6 Apr. 1906 om Köb.

Lov af 19 Apr. 1907 Tilvirkning og Forhandling af Margarine m. m. (hvilken Lov er traadt i Stedet for tidligere Love af lign. Art).

Lov af 4 Maj 1907 om Indførelse af det metriske System.

Lov af 5 Maj 1908 om Toldafgifterne m. m.

Lov af 27 Maj 1908 om Diplomat- og Konsulatvæsen.

Lov af 27 Maj 1908 om Tilsyn med Udførsel af Kod m. m.

Lov af 22 Dec. 1908 om Forældelse af visse Fordringer.

Lov af 14 Maj 1909 om autoriserede Revisorer.

Lov af 18 April 1910 om Undersøgelse af Levnedsmidler m. m. (hvilken Lov er traadt i Stedet for tidligere Love af lignende Art).

Reglerne for Loves Tilblivelse og Offentliggørelse ere i Danmark i Hovedsagen følgende.

Et Lovforslag bliver ifølge Grundloven først Lov, naar det i enslydende Skikkelse er vedtaget af begge Rigsdagens Afdelinger (Folketing og Landsting) og derhos stadfæstet af Kongen, hvis Underskrift skal være ledsaget af en ansvarlig Ministers Medunderskrift.

Lovenes og andre offentlige Bestemmelers Bekendtgørelse sker i Overensstemmelse med Reglerne i Lov af 25 Juni 1870 om Udgivelsen af en Lovtidende og en Ministerialtidende (jvf. Adg. 24./9. 1870), hvori det hedder:

§ 1. Fra 1ste Januar 1871 udgives ved Regeringens Foranstaltning en Lovtidende og en Ministerialtidende.

2. I Lovtidenden indføres saavel alle Love som alle kongelige og ministerielle Anordninger, under hvilket Navn de end maatte udstedes (Anordninger, aabne Breve, Bekendtgørelser, Kundgørelser, Plakater, Reglementer, Regulatorer, Instruxer, Vedtægter osv.), og hvad enten de Forskrifter, som deri indeholdes, vedkomme hele Riget eller kun enkelte Provinser, Stæder eller Egne eller Dele af Befolkningen.

3. Fra det nævnte Tidspunkt af bortfalder den hidtil foreskrevne Thinglæsning af Love og Anordninger, hvorimod disses Offentliggørelse igennem Lovtidenden bliver den bindende Bekendtgørelsesform. Den paagældende Lov eller Anordning træder, forsaavidt den ikke indeholder nogen herfra afvigende Bestemmelse, i Kraft Ugedagen efter den Dag, da det Nummer af Lovtidenden, hvori den bekendtgøres, er udgivet. Hvert Nummer skal betegne den Dag, da det udgives.

Act of 7th April 1899 concerning *explosives*.

Act of 29th March 1904 concerning *copyright* and the *right of property in products of art*.

Act of 1st April 1905 concerning the protection of *designs*.

Act of 14th April 1905 concerning compositions with creditors outside the Bankruptcy Court and concerning greater facility for entering into such compositions with creditors.

Act of 30th March 1906 concerning *trade in and import and export of agricultural produce*<sup>1)</sup>.

Act of 6th April 1906 concerning the establishment of the "*Mortgage Bank of the Kingdom of Denmark*".

Act of 6th April 1906 concerning *sale*.

Act of 19th April 1907 concerning the production and sale of *margarine* etc. (which Act has replaced previous Acts of a similar character).

Act of 4th May 1907 concerning the introduction of the *metrical system*.

Act of 5th May 1908 concerning *customs duties* etc.

Act of 27th May 1908 concerning the functions of *diplomatic agents and consuls*.

Act of 27th May 1908 concerning supervision of the *export of meat* etc.

Act of 22nd Dec. 1908 concerning *prescription* of certain claims.

Act of 14th May 1909 concerning *authorised auditors*.

Act of 18th April 1910 concerning *inspection of victuals* etc. (which Act has replaced previous Acts of a similar character).

The Regulations as to the promulgation and publication of Acts of Parliament are in Denmark in the main as follows:

A Bill does not according to the Constitution become an Act of Parliament until it has passed the two chambers of the Rigsdag (*Folketing* and *Landsting*) in a similar form and furthermore been sanctioned by the King, whose signature has to be countersigned by a responsible cabinet minister.

The publication of Acts of Parliament and of other notifications takes place in accordance with the regulations contained in the Act of 25th June 1870 concerning the publication of a Legal Gazette and a Ministerial Gazette (cf. Ordinance of 24th Sept. 1870), in which it is said:

§ 1. From 1st January 1871 the Government authorises the publication of a Legal Gazette and of a Ministerial Gazette.

2. In the *Legal Gazette* are published all Acts of Parliament as well as all Royal and Ministerial Ordinances, in whatever form they may have been decreed (Ordinances, Letters Patent, Notifications, Placards, Standing Orders, Regulations, Instructions, By-laws etc.), no matter whether the provisions contained in them apply to the whole Kingdom or only to single provinces, towns or regions, or parts of the population.

3. From the date mentioned the prescribed proclamation in public of Acts of Parliament and Ordinances is abolished, while henceforth their publication in the Legal Gazette will be the authorised mode of publication. An Act of Parliament or an Ordinance will, in so far as it does not contain anything to the contrary, become law *a week after* the day on which the number of the Legal Gazette containing it has been published. Every number of the Legal Gazette shall mention the day of its publication.

5. I Ministerialtidenden optages i Reglen de administrative, kongelige eller ministerielle Befalinger af almindeligere Karakter, som udstedes til vedkommende Øvrigheder og Myndigheder, saa og de Resolutioner og Tilkendegivelser vedkommende enkelte Tilfælde, der kunne have almindelig Interesse.

\* \* \*

I de sidste 30 Aar er der arbejdet paa at tilvejebringe den størst mulige Overensstemmelse mellem dansk, norsk og svensk Lovgivning, særlig paa Handelsrettens og Sorettens Omraade. Adskillige fælles skandinaviske Kommissioner have i dette Øjemed været nedsatte. Om Resultatet af denne Bestræbelse se Afsnittet: Skandinavisk Vexel- og Chekret.

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During the last 30 years efforts have been made to bring about the greatest possible harmony between Danish, Norwegian and Swedish legislation, especially as regards commercial and maritime law. Various inter-Scandinavian Committees have sat with this object in view. For information with regard to the results of these efforts see the section: The Scandinavian Law of Bills of Exchange and Cheques.

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## Om den processuelle Fremgangsmaade i Handelssager, Fogedforretninger og Voldgift.

En særlig Domstol til Behandling af Handelssager findes kun i Kjøbenhavn, hvor den ved Lov af 19 Febr. 1861 oprettede „Sø- og Handelsret“ behandler kjøbenhavnske Søsager og kjøbenhavnske Handelssager i 1ste Instans. Proceduren er en Sammensætning af skriftlig og mundtlig Procedure, og i Paakendelsen deltage ved Siden af den retskyndige Formand et Antal henholdsvis søkyndige eller handelskyndige Lægmand.

Bortset herfra behandles Handelssager i Hovedsagen ved de samme Domstole og efter de samme processuelle Regler som alle andre Sager. Det vil derfor være nødvendigt først at give en kort Oversigt over dansk Retsorganisation og dansk Procedure i Almindelighed (A); derefter ville de særlige Regler i Loven af 1861 blive omtalte (B); og sluttelig Reglerne om Fogedforretninger (C); og Voldgift (D).

Indledningsvis skal bemærkes, at den gældende danske Civilproces som Følge af, at den overvejende er skriftlig, lider under en stærk Tendens til Langsomhed, hvorhos den Omstændighed, at Bevisbedømmelsen ikke er helt fri, samt at der ingen Adgang er til at afhøre Parterne som Vidner, kan gøre det vanskeligt for Sandheden at trænge igennem, naar der fra nogen af Parternes Side procederes illoyalt. Paa den anden Side er Proceduren billig, og der er en ret udstrakt Adgang til at bringe en Sag frem for højere Instans.

Som Følge af de anførte Mangler har en Reform af den hele Procesmaade længe staaet paa Dagsordenen. Grundloven af 1849 foreskriver, at Offentlighed og Mundtlighed saa snart og saa vidt som muligt skal gennemføres i Retsplejen. Siden da er der tre Gange af Regeringskommissioner udarbejdet Betænkninger og Forslag til en fuldstændig Reform af Retsplejen, og den 26 Mars 1909 er der endelig vedtaget en Lov om Rettens Pleje, der i cirka 1000 §§ inderholder en fuldstændig Reform af dansk civil og kriminel Retspleje, hvorved denne bringes i Overensstemmelse med de i moderne europæisk Proces herskende Grundsætninger. Denne Lov skal dog først træde i Kraft, naar nogle nærmere angivne Tillægslove ere vedtagne, og inden dette sker, vil der sandsynligvis endnu hengaa nogle Aar.

Det følgende er en Fremstilling af den endnu gældende danske Proces.

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## The procedure in commercial law suits, execution and arbitration.

There is a special tribunal for commercial law suits only in Copenhagen, where the “Tribunal for Maritime and Commercial Matters”, established by the Act of 19th Feb. 1861, deals in the first instance with such maritime and commercial law suits as come within the jurisdiction of Copenhagen. The procedure is a combination of oral and written procedure, and the judgment is rendered by a learned judge as president, assisted by a number of laymen who are experts in maritime and commercial matters.

With this exception commercial law suits are in the main subject to the same tribunals and the same rules of procedure as all other law suits. It will therefore be necessary in the first instance to state briefly how Danish law and procedure are administered in general (A); in the second place will be mentioned the special rules contained in the Act of 1861 (B); and finally the rules relating to execution (C) and arbitration (D).

In the first place it should be observed that the Danish procedure in civil matters, owing to the fact that for the most part it takes place in writing, suffers from a great tendency to drag; furthermore the fact that the appreciation of the evidence is not quite free, and that the contending parties are not allowed to go into the witness-box may make it difficult for the truth to come to light when the parties are not faithful in their dealings. On the other hand the procedure is cheap, and there is great facility for bringing a law suit before a higher tribunal.

On account of the above mentioned defects a reform of the whole procedure has for a long time been the order of the day. The constitution of 1849 prescribes that the procedure, as soon and as far as possible, shall be made public and oral. Since then royal committees have three times made reports and projects with a view to the complete reform of the judicial administration, and finally on 26th March 1909 an Act was passed bearing on the administration of justice which in about a thousand articles contains a complete reform of Danish civil and penal law, bringing it on a par with the principles prevailing in modern European procedure. This Act will however not come into force until some specially indicated additional laws have been enacted by Parliament, and some years will probably have passed before this will take place.

The following is a survey of Danish procedure still in force.

## A. Retsorganisation og Procedure i Almindelighed.

Den danske Retsorganisation er i Hovedtrækkene denne:

Udenfor Kjøbenhavn er Landet delt i c. 130 Kredse, omfattende hver enten en Købstad med omliggende Landdistrikt eller rene Landdistrikter. I hver Kreds findes en af Staten ansat, retskyndig Underdommer, der under Navn af Byfoged, Birkedommer eller Herredsfoged som Enkeltdommer i 1ste Instans behandler og paakender samtlige i Kredsen opstaaende civile (og kriminelle) Sager uden Hensyn til disses Art og Størrelse, dog at visse Arter (Gæsterets-sager, private Politisager, smaa Gældssager og Sosager) behandles efter noget særlige Regler.

Fra disse Underretter kan Sagen, naar den angaar mindst 20 Kr., indankes for Overretten, nemlig i Jylland „Landsoverretten i Viborg“ og paa Øerne „Landsoverretten i Kjøbenhavn“. Overretterne ere kollegialt sammensatte Retter, udelukkende beklædte af Retskyndige. I hver Sags Paakendelse deltage mindst 3 af Overrettens Medlemmer, jvf. Lov 22 December 1910.

Angaar Sagen mindst 200 Kr., kan den fra vedkommende Overret indankes for Højesteret, der har sit Sæde i Kjøbenhavn, og udelukkende beklædes af retskyndige Dommere, af hvilke mindst 9 deltage i hver Sags Paakendelse.

Medens Sager, der begynde udenfor Kjøbenhavn og feres op til Højesteret, saaledes passere 3 Instanser, findes der for de Sager, der begynde i Kjøbenhavn, kun 2 Instanser, idet enhver kjøbenhavnsk Sag begynder ved en af de 3 kjøbenhavnske Retter: Hof- og Stadsretten, Kriminal- og Politiretten eller Sø- og Handelsretten, og derfra, hvis den overhovedet kan appelleres (hvilket ordentligvis vil sige, hvis den angaar mindst 200 Kr.), kan indankes for Højesteret.

Ved Hof- og Stadsretten (der er den samme Ret, der fungerer som Overret for Øerne — dens samlede Benævnelse er derfor „den kgl. Landsover- samt Hof- og Stadsret“) behandles alle kjøbenhavnske civile Sager, der ikke særlig ere henlagte til Politirets- eller Sø- og Handelsrets-Behandling, og Behandlingen foregaar enten ved en af Hovedrettens 10 Afdelinger eller ved særlige Afdelinger af Retten, der benævnes „Gældskommission“ og „Gæsteret“.

Ved Kriminal- og Politiretten og dens Afdelinger behandles dels de i Kjøbenhavn opstaaende kriminelle Sager, dels de sammesteds opstaaende offentlige Politisager, dels endelig under Benævnelsen „private Politisager“ visse Arter af kjøbenhavnske civile Sager.

Ved Sø- og Handelsretten behandles kjøbenhavnske Sø- og Handelssager; jvf. nærmere ndf.

Bortset fra enkelte Undtagelser skal enhver civil Sag indledes med et Forligsforsøg. Denne Forligsmægling foregaar ved særlig dertil bestemte Forligskommissioner, eller, forsaavidt angaar „private Politisager“ og „Gæsteretssager“ samt i Kjøbenhavn tillige „små Gældssager“, ved selve den Ret, der eventuelt skal paadømme Sagen. Et for en Forligskommission eller Ret indgaaet eller rati- haberet Forlig har samme Exekutionskraft som en Dom.

Selve Proceduren er — bortset fra Sager, der ere for Højesteret, Sø- og Handelsretssager og offentlige Politisager i Kjøbenhavn — rent skriftlig og ligger under den skriftlige Procedures bekendte Tilbøjelighed til Langsomhed. Selv Bevisførelsen foretages Dommerne i skriftlig Form, og Dommerne indtage en meget tilbagetrukket Stilling under hele Proceduren, der ganske beherskes af Forhandlingsmaximen. I sidstnævnte Retning gælder dog en Undtagelse for de ovf. nævnte „små Gældssager“ og „private Politisager“, idet der i disse Sager er paalagt Dommeren en Vejledningspligt, der kan gøre Sagførerhjælp overflødig. Til Små Gældssager henhøre alle Gældsskrav paa under 200 Kr. Til private Politisager henhører ifølge en Række særlige Love en stor Mængde forskellige Arter af Sager. De praktisk taget vigtigste af disse ere Tyendesager, Alimentations-sager og Sager angaaende mundtlige Injurier, men i øvrigt høre dertil bl. a. ogsaa Patentsager og Sager mellem Handlende og deres Lærlinge.

### A. Judicial organisation and procedure in general.

The Danish judicial organisation is in the main as follows:

Outside Copenhagen the country is divided into about 130 districts, each of which either comprises a town with surrounding country or is exclusively rural. Each district has a qualified judge, authorised by the State, who, under the name of town judge, judge of the "Birk" or district judge, as single judge deals with and in the first instance determines all civil (and criminal) causes arising within the district without regard to their nature and importance. Some special causes however (Visitors' Court causes, private police causes, and minor claims and maritime causes) are dealt with to some extent according to special rules.

From these lower tribunals the cause when it amounts to at least 20 kroner may be brought before the Appeal Court, which in Jutland is the "District Appeal Court of Viborg", and in the Islands the "District Appeal Court of Copenhagen". The appeal courts are bodies exclusively composed of learned judges. In the adjudication of every cause at least three of the members of the Appeal Court take part (see Act of 22nd Dec. 1910).

If the cause amounts to at least 200 kroner, it may be the subject of appeal from the High Court in question to the Supreme Court, which sits in Copenhagen, and the members of which are exclusively learned judges, of whom at least 9 take part in the decision of every cause.

While law suits which are started outside Copenhagen and are brought to the Supreme Court have thus three instances to pass, there are for law suits started in Copenhagen only two instances, as every one of such causes is started before one of the following three tribunals of Copenhagen: The Court and Town Tribunal, the Criminal and Police Tribunal or the Maritime and Commercial Tribunal, and thence, if subject to appeal (which as a rule means if the cause is worth at least 200 kroner) it may be brought before the Supreme Court.

The Court and Town Tribunal (which also serves as an appeal court for the Islands — its complete title being therefore "The Royal Country High Tribunal as well as Court and Town Tribunal) decides all civil causes of Copenhagen which are not specially dealt with by the Police Court or the Maritime and Commercial Tribunal, and the proceedings take place either before one of the 10 departments of the principal tribunal, or before special departments of the tribunal which are called "Debt Committee" and "Visitors' Court".

The Criminal and Police Tribunal and its departments deal with both criminal causes and public police causes arising in Copenhagen, and also, under the name of "Private Police causes", with certain kinds of civil causes in Copenhagen.

The Maritime and Commercial Tribunal deals with maritime and commercial causes arising in Copenhagen (see particulars below).

Excepting a few special cases every civil cause is started with an attempt at compromise. The negotiations for compromise take place before Compromise Committees which have been established for this special purpose, or, in the case of "Private Police Causes" and "Visitors' Court Causes" and in Copenhagen also "Small Debt Causes", before the same tribunal as is eventually to judge the cause. An arrangement arrived at or confirmed before a Compromise Committee or Tribunal has the same legal force as a judgment in court.

The procedure itself — except in causes dealt with by the Supreme Court, maritime and commercial causes and public police causes in Copenhagen — takes place in writing and, as is usual with this method, is somewhat slow. Even evidence of the parties is submitted to the judges in writing, and the judges only play a minor part during the whole procedure, which is directed solely by the rules of the system of compromise. In this last respect, however, must be excepted the above mentioned "Small Debt causes" and "Private Police causes", as in these causes it is the duty of the judge to guide the proceedings, and this renders counsel superfluous. To Small Debt causes belong all claims amounting to less than 200 kroner. To Private Police causes belong, according to a series of special laws, a great variety of cases. Speaking generally the most important of these are domestic servants' causes, causes concerning maintenance and slander suits, but in addition they include also matters concerning patents and disputes between traders and their apprentices.

Ejendommeligheden ved de under Navn af „Gæsteretssager“ behandlede Sager er den, at Proceduren er beregnet paa noget større Hurtighed end den sædvanlige. Forudsætningen for, at en Sag kan behandles som Gæsteretssag er enten, at en af Parterne er bosat udenfor den Retskreds, ved hvis Ret Sagen behandles, men dog ved Sagens Anlæg midlertidig opholder sig i denne, eller at Sagen hører til de særlige Arter, for hvis Vedkommende Gæsteretsbehandling udtrykkelig er foreskrevet. Blandt disse Arter maa særlig fremhæves alle So og Handels-sager udenfor Kjøbenhavn.

En hurtigere Behandling end den sædvanlige fremkommer ogsaa, dels hvor der er Hjemmel for at anvende den saakaldte „hurtige Retsforfølgning efter Forordningen af 25 Januar 1828“, dels i Vexelsager. Anvendelsen af Fdg. 25 Jan. 1828 forudsætter en forudgaaende udtrykkelig Vedtagelse derom fra Debtors Side i vedkommende Gældsbrev. Hurtigheden beror derpaa, at Debitor i Reglen kan afskæres fra at faa Anstand til at føre Bevis for sine Indsigelser, naar disse gaa ud paa andet end, at der foreligger Falsk eller Umyndighed. En lignende Exekutivproces er hjemlet i Vexelsager ifølge Lov Nr. 66 af 28 Maj 1880.

En civil Sag maa efter dansk Ret anlægges ved Debtors Hjemting (d. v. s. ved Underretten paa det Sted, hvor Sagsøgte bor eller, i Mangel af Bopæl, opholder sig), medmindre der foreligger gyldig og bevislig Vedtagelse mellem Parterne om, at Sagen kan anlægges ved en anden Underret, eller der er særlig Hjemmel i Lovgivningen for at anlægge den udenfor Debtors Hjemting. De i gældende dansk Ret anerkendte Undtagelser ere dog praktisk taget ikke tilstrækkelig vidtgaaende. Som vigtige Undtagelser kan fremhæves den S. 35 omtalte særlige Værnetingsregel for anmeldte Firmaers Vedkommende, den ndf. S. 20 omtalte Arrestværneting, samt Værnetingsreglerne i So- og Handelsretslovens § 20 (se ndf. S. 15).

Om Bevisbyrden findes ingen almindelige Lovregler. Der er ingen almindelig Hjemmel for at faa Rettens forudgaaende Afgørelse af, hvem Bevisbyrden paahviler.

Det er derhos i Hovedsagen overladt til Parterne selv, hvilke Bevismidler de ville benytte under Sagen (Vidner, Syn og Skøn, Dokumenter); dog er der ingen Adgang til at afhøre selve Parterne som Vidner, og Savnet heraf er stærkt føleligt. Derhos er Dommernes Bevisbedømmelse legalt endnu bunden, forsaavidt som Loven ser det normale fulde Bevis i 2 fuldgyldige Vidners overensstemmende Forklaring. Herfra gores dog en Række Undtagelser, og i det hele har Udviklingen ført med sig, at Domstolene tiltage sig større og større Frihed i Bevisbedømmelsen. Som særlige og vigtige Regler maa nævnes dels, at den, der kan fremlægge et Dokument, hvis Indhold er af Betydning for Sagen, og som er underskrevet med Modpartens Navn, kan fordre, at Modparten, hvis han vil benægte Dokumentets Ægthed, skal støtte denne Benægtelse med sin Ed, dels, at den, der har tilvejebragt noget, men ej fuldt Bevis for sin Paastand, for saa vidt kan faa Sagens Udfald gjort afhængig af Modpartens, eventuelt sin egen Ed.

Der findes tillige visse andre særlige Regler om Adgangen til Parts Ed; men nogen almindelig Adgang til Edsdelation er ikke hjemlet.

I Tilfælde af Sagsøgerens Udeblivelse under Sagen bliver Sagen ordentligvis hævet; i Tilfælde af Sagsøgtens Udeblivelse trods lovlig Stævning kan Sagen optages til Doms og paakendes efter „de fremlagte Breve og Bevisligheder“.

Medens Proceduren ved Overret ligesom ved Underret er rent skriftlig, er ved Højesteret selve Plæderingen mundtlig, hvorimod Beviserne ogsaa der maa fremlægges i skriftlig Form; de oplæses for Retten.

Nogen Sagførertvang kendes ikke i dansk Ret, idet enhver — Indlænding eller Udlænding — personlig eller ved sin „Værge, Frænde eller Tjener“ kan føre

The distinguishing characteristic of the causes dealt with under the name of "Visitors' Court causes" is that the procedure is somewhat more expeditious than is the rule in ordinary cases. The conditions entitling a cause to be treated as a "Visitors' Court cause" are either that one of the parties should live outside the jurisdiction of the tribunal before which the cause is to be dealt with, though temporarily staying in the district at the time when the summons is issued, or that the cause should belong to the category for which "Visitors' Court" procedure has been expressly provided. Amongst these causes must especially be mentioned all maritime and commercial causes outside Copenhagen.

Again, more rapid procedure than that which is generally followed is also used in causes where the so-called "rapid procedure according to the decree of 25th January 1828" is permitted, and in affairs of bills of exchange. The decree of 25th Jan. 1828 may be applied when the debtor in the note of hand in question has expressly agreed to the rapid procedure in case of a law suit. The rapidity consists in the circumstance that the debtor is virtually precluded from the chance of proving his objections when these are other than forgery or incompetence through being under age. A similar procedure of execution is permitted in cases of bills of exchange according to Act No. 66 of 28th May 1880.

When civil causes are concerned an action must according to Danish law be brought in the debtor's jurisdiction (i. e. before the lower tribunal of the place where the defendant lives or in default of settled residence, where he is staying), except where it can be proved that the parties have made a valid agreement for the bringing of the action before another inferior tribunal, or in cases where it has been provided by legislation that an action may be brought outside the debtor's jurisdiction. The exceptions which the Danish law recognises are however in practice not of great importance. Amongst the more noteworthy may be cited the special rule, mentioned on page 35, as to what jurisdiction is competent where registered firms are concerned, the competent jurisdiction in matters of imprisonment mentioned below on page 20, and the rules concerning competent jurisdiction contained in § 20 of the Law of the Maritime and Commercial Tribunal (see below p. 15).

No general legal rules exist as to the onus of proving a case. The law has not provided that the tribunal may be asked beforehand to decide which of the parties should prove his own case.

It is in the main left to the parties themselves to choose whatever modes of proof they think fit to substantiate their cause (witnesses, valuations, documents); the parties themselves, however, are not allowed to go into the witness-box, a feature of the procedure which is very detrimental. Furthermore, judges are legally deprived of full liberty in their appreciation of the evidence, inasmuch as the law considers statements corroborated by two irreproachable witnesses as full normal proof. There is however a series of exceptions to this rule, and on the whole, judicial development has so operated that the tribunals are constantly assigning to themselves greater liberty in rendering their judgments. As special and important rules must be mentioned, in the first place, that which permits the suitor who can produce a document the contents of which are of importance for the cause, and which is signed by the other party, to demand that his opponent, if he denies the genuineness of the document, shall substantiate his denial by oath, and secondly the rule which provides that a party who has brought forward some point of interest but not complete proof of his assertions can make the result of the cause depend on the oath of the other party, and eventually on his own oath.

There are also certain other special rules as to when the oaths of the contending parties can be taken; but the law has made no general provision as to the tendering of oaths.

In the event of the absence of the plaintiff from court, the case is as a rule suspended; in the absence of the defendant, who has been summoned according to the law, the procedure can be closed and judgment given in accordance with "the letters and proofs of evidence produced".

The procedure before an Appeal Court or Lower Tribunal takes place entirely in writing. Before the Supreme Tribunal the argument itself is oral, but here again the proofs must be produced in writing; they are read before the tribunal.

According to Danish law there is no compulsion for the parties to be represented by a solicitor, but everybody — native or foreigner — can plead his cause in person

sin Sag. Kan eller vil Parten imidlertid ikke det, maa han ordentligvis lade sig repræsentere af en Sagfører.

Beskikkelse som Sagfører kan Enhver faa, der godtgør at opfylde visse almindelige Betingelser (juridisk Uddannelse, straffri Vandel osv.). Kun Beskikkelsen som Højesteretssagfører forudsætter yderligere, at Vedkommende har aflagt en Prove for Højesteret, som denne Ret har fundet fyldestgørende. — Nogen officiel „Sagforertax“ haves ikke.

Ifølge den herskende Praxis paalægges det i Reglen ikke en Part at godtgøre Modparten Sagens Omkostninger, blot fordi vedkommende Part taber, men kun naar det tillige findes at have været urimeligt af ham, at lade det komme til Proces.

Nogen Kautionspligt med Hensyn til Omkostninger og desl. paahviler der hverken Udlænding eller Indlænding hverken i Forhold til Modparten eller til Retten.

Det kan i Forbindelse hermed mærkes, at Danmark har tiltraadt Haager-Konventionerne af 14 Novbr. 1896 med Tillægs-Protokol af 22 Maj 1897 saavel som den i Stedet derfor traadte Konvention af 17 Juli 1905 (jvf. Bkg. Nr. 119, 1909 og Nr. 161 og 162, 1910).

## B. Sø- og Handelsretten i Kjøbenhavn.

Hoved Indholdet af Loven af 19 Febr. 1861 „om Oprettelse af en Sø- og Handelsret i Kjøbenhavn samt Sø- og Handelssagers Behandling udenfor Kjøbenhavn“ (med Tillægslove, navnlig Konkurslovens § 149, Lov Nr. 50 af 13 April 1894 og Lov Nr. 262 af 22 December 1910) er følgende:

### I. Sammensætning.

§ 2. (Jvf. Konkurslovens § 149, Lov Nr. 50 af 1894 og Lov Nr. 262 af 1910): Sø- og Handelsretten bestaar af en af Kongen beskikket Formand, en retskyndig Næstformand, et Antal handelskyndige og et Antal søkyndige Medlemmer.

4. Formanden (og Næstformanden) maa være i Besiddelse af de Egenskaber, der udkræves til at være Medlem af en af Landets Overdomstole. De valgte Medlemmer maa have Indfødsret, være over 30 Aar gamle, have uplettet Rygte, og ikke være ude af Raadighed over deres Bo. De handelskyndige Medlemmer maa derhos drive eller have drevet Næring som Grosserere, Købmand, Detaillister, Speditører, Skibsredere, Vexellerere eller Mæglere samt have Bopæl eller Forretning i Kjøbenhavn, de søkyndige være eller have været Skibsforere eller Offieerer i den kongelige Marine.

(Efter Lov Nr. 262, 1910 kan det forlanges, at det ene af Rettens læge Medlemmer tages blandt Mænd, hørende til Skibsmandskab eller underordnet Handelspersonale, naar Sagen er rejst ifølge § 12 Nr. 1, § 13 Nr. 5 eller § 17.)

5. Formand (og Næstformand) er gageret; de øvrige Medlemmer erholde intet Vederlag.

8. I Reglen udfordres, for at sætte Retten, Formandens (eller Næstformandens) og 4 Medlemmers Tilstedeværelse. Sager, hvis Genstand, afset fra paaløbende Renter og Procesomkostninger, er under 100 Rigsdalers (= 200 Kroners) Værdi, kunne dog behandles og paakendes af Formanden (eller Næstformanden) og tvende tiltagne Medlemmer. Formanden bestemmer, efter Forhandling med Rettens øvrige Medlemmer, paa hvilken Maade og efter hvilken Omgang de handels- og søkyndige Medlemmer skulle deltage i Forretningerne. Formanden bestemmer ligeledes for hver enkelt Sags Vedkommende, hvorvidt Bisidderne alene skulle tages blandt de handelskyndige eller helt eller for en Del og da i hvor stort Antal blandt de søkyndige Medlemmer.

Hertil føjer Lov Nr. 262 af 22 December 1910 følgende Regler:

1 borgerlige Sager er de fagkyndige Medlemmers Tilstedeværelse kun nødvendig under mundtlig Procedure. Udenfor denne kan Retten beklædes af Formanden,



or by means of his "guardian, relative or servant". If the party cannot or will not do this, he must ordinarily be represented by a solicitor.

Any person can be authorised as a solicitor who can prove that he fulfils certain general conditions (legal training, absence of conviction for misdemeanour etc.). On the other hand the authorisation to plead before the Supreme Tribunal is given only on the further condition that the candidate has passed an examination before this very Tribunal which it has found satisfactory. — There is no official scale of fees for solicitors.

According to the prevailing practice a party is not as a rule compelled, for the sole reason that he has lost his suit, to pay his opponent's costs, but only when it is considered that he has brought the action on too slight a pretext.

Compulsory guarantees in regard to costs etc. exist neither for foreigners nor for natives, and this rule holds good as well with regard to the opposing party as with regard to the Tribunal.

It may in this connection be observed that Denmark has adhered to the Convention of the Hague of 14th Nov. 1896 with the supplementary protocol of 22nd May 1897, as well as to the Convention of 17th July 1905 which has replaced the previous convention (see notifications No. 119, 1909 and No. 161 and 162, 1910).

## **B. The Maritime and Commercial Tribunal of Copenhagen.**

The principal contents of the Act of 19th Feb. 1861 "concerning the establishment of a Maritime and Commercial Tribunal in Copenhagen, and the conduct of commercial causes outside Copenhagen" (with supplementary Acts, especially the Bankruptcy Act § 149, Act No. 50 of 13th April 1894 and Act No. 262 of 22nd Dec. 1910) are as follows:

### **I. The members of the tribunal.**

§ 2. (See the Bankruptcy Act § 149, Act No. 50 of 1894 and Act No. 262 of 1910): The Maritime and Commercial Tribunal is composed of a president appointed by the King, a vice-president who must be a lawyer, a certain number of commercial men as experts and members who are experts in maritime matters.

4. The president (and the vice-president) must have the same qualifications as are necessary for membership of one of the Appeal Courts of the country. The chosen members must be native Danes, over 30 years of age, have an absolutely clean record, and not have been deprived of the right to dispose of their property. The commercial experts must be or have been engaged in business as wholesale or retail dealers, merchants, forwarding agents, ship owners, money-changers or brokers, and have their residence or business in Copenhagen; the maritime experts must be or have been captains or officers in the royal navy.

(According to Act No. 262, 1910, it can be asked that one of the expert members of the Tribunal shall be chosen from men who are members of a ship's crew or who are subordinate business men when the action has been brought according to § 12 No. 1, § 13 No. 5 or § 17.)

5. The president and the vice-president are paid; the other members receive no remuneration.

8. The general rule is that the tribunal is not competent to render judgment unless the president (or the vice-president) and four other members are present. Causes involving less than 100 Rigsdalers (— 200 Kroner), exclusive of accruing interest and expenses of the proceedings, can however be taken and adjudicated on by the president (or the vice-president) and two assisting members. The president decides, in agreement with the other members of the Tribunal, in what manner and order the commercial and maritime experts shall take part in the business of the Tribunal. The president also decides at the beginning of every cause as to whether his assistants should be exclusively chosen from among the commercial experts or entirely or in part and in what proportion from among the maritime experts.

Act No. 262 of 22nd December 1910 adds to the above the following rules:

In civil matters the presence of the expert members of the Tribunal is necessary only during the oral part of the proceedings. After this the Tribunal may be com-

henholdsvis Næstformanden, alene, dog at denne, dersom Retshandlingen angaar en Sag, der skal paadømmes ved Sø- og Handelsretten, og den bestaar i Vidneførsel, Afhjemling af Syn eller Skon, Modtagelse af Partsed eller Kendelse om et omtvistet Punkt, i Reglen bør tilkalde de fagkyndige Medlemmer, der skulle deltage i Paadømmelsen, forsaavidt en saadan Tilkaldelse ikke i det enkelte Tilfælde frembyder Vanskeligheder. Domme i Sager, hvor den ene Part udebliver, kunne afsiges af Formanden eller Næstformanden alene.

Til Optagelse af Soforklaringer eller Soforhør tilsiges to af Rettens søkyndige Medlemmer (Lov Nr. 50 af 13 April 1894, § 3).

## II. Virkekreds.

11. Sø- og Handelsretten behandler og paakender alle Sø- og Handelssager og udover de andre Forretninger, som ved denne Lov ere henlagte derunder eller fremtidig maatte blive det.

12. Søsager ere 1. De Sager, der angaa Rederes, Skipperes og Skibsfolks indbyrdes Rettigheder, Pligter og Forhold vedrørende disse deres Stillinger. — 2. Sager angaaende Leje og Befragtning af Skibe, [herunder maa falde bl. a. Sogsmaal til Betaling af Fragt eller af Udlæg i Anledning af Fragtforholdet, Sager angaaende Skipperens Pligter paa Grund af Fragtforholdet og Sager om Bugsering]. — 3. Sager angaaende Havari, Paasejling og Lodsvæsen. — 4. Sager angaaende Vrag og Strandinger. — 5. Sager om Bodmeri, Respondentia og Bilbreve [Dette maa nu forstaaes som omfattende alle Sager om Sopanteret efter Solovens Kap. 11]. — 6. Sager om Soassurance. — 7. Sager angaaende Bygning, Reparation samt Køb og Salg af Skibe. — 8. Alle andre Sager, der rejse sig af kontraktmæssige eller dermed beslægtede Forhold, vedrørende Handelsskibsfarten [altsaa f. Ex. Sager angaaende Overenskomst om at indise Skibe eller angaaende Køb af Proviant til Skibets umiddelbare Forsyning]. — Hertil kommer: 9. Ifølge Skibsregistreringslov af 1 Apr. 1892 § 22: Sogsmaal angaaende Skibsregistreringsbureauets Beslutninger om de anmeldte Ejeres Adkomster og deres Berettigelse til at eje dansk Skib.

13. Handelssager ere: 1. Alle mellem Handlende — hvorved forstaaes Enhver, der driver Handelsforretninger som Næringsvej — opkommende Sager, der have deres Oprindelse fra og umiddelbart have Hensyn til Handelsforhold. — 2. Sager mellem Handlende og Fabrikanter eller Haandværkere, hidrørende fra Køb og Salg i saadanne Partier, der ere Genstand for Groshandel, af Ting, der skulle bruges til Fabrikens eller Haandværkets Drift eller til Forarbejdelse i eller ved samme, eller af Varer, der ere tilvirkede i Fabrikken eller ved Haandværket. — 3. Sager betreffende Vexel-, Bankier- og Mæglerforretninger mellem Vexellerere, Bankierer og Mæglere eller mellem disse og Handlende saa og betreffende Handler efter Mæglerslutseddel. — 4. Sager mellem Handlende og Assurandører betreffende førstnævntes Forsikring af Handelsvarer mod Ildsvaade. — 5. Sager, der rejse sig af Handels-Faktors, -Fuldmægtiges, -Betjentes . . . Tjenesteforhold til deres Principaler, samt 6. alle Vexelsager mellem Handlende. — 7. Endelig tillader § 13, sidste Stykke den Ikke-Handlende, der har indladt sig med Handlende, Vexellerere, Bankierer eller Mæglere i Forhold, der for Sidstnævntes Vedkommende have Karakteren af en Handels-, Vexeller-, Bankier- eller Mæglerforretning, i den Anledning at søge de Paagældende ved Sø- og Handelsretten. Der opstilles derhos den almindelige Præsumptionsregel, at alle af Handlende med andre Handlende indgaaede Kontrakter og til dem udstedte Forskrivninger skulle formodes at angaa deres Handelsbedrift og derfor henhøre under Handelsretten, forsaavidt det modsatte ikke klart fremgaar af Kontraktens Indhold og Ojemed. — Hertil kommer 8. ifølge Lov af 23 Febr. 1866 § 11: Tvistigheder mellem Oplagsbestyreren og vedkommende Oplægger eller Ihændehaver af Oplagsbeviser, og ifølge Lov (Nr. 34) af 30 Marts 1894 § 18 om Oplagsbeviser og Garantibeviser for Varer, der oplægges i Kjøbenhavn's Frihavn: alle Tvistigheder om Rettigheder eller Forpligtelser i Henhold til denne Lov. — 9. ifølge Fimalovens § 6: Spørgsmaal om Udslettelse af en i Handelsregistret optaget Anmeldelse, — 10. ifølge Varemærkelov (Nr. 52) af 11 Apr. 1890 § 17: Borgerlige Retstrætter, i hvilke der nedlægges Paastand i Henhold til Bestemmelserne i denne Lov, — 11. ifølge § 7 i Lov Nr. 70 af 27 Apr. 1894 om Straf

posed solely of the president, or sometimes solely of the vice president, who however, when the cause is one which is to be adjudicated on by the Maritime and Commercial Tribunal, and when witnesses and the opinions of experts have to be heard, oaths of the parties have to be taken or difficult points settled, ought as a rule to convoke the experts to assist him when judgment is given, if special circumstances do not prevent them from appearing. Judgment can be given by the president alone in causes where one of the parties is absent from the Tribunal.

When reports of maritime matters or inquiries into maritime matters are made two of the maritime members are called to the assistance of the Tribunal (Act No. 50 of 13th April 1894, § 3).

## II. Competence of the tribunal.

11. The Maritime and Commercial Tribunal deals with and adjudicates on all maritime and commercial causes and acquits itself of all other matters assigned to it by this Act or which may be assigned to it in the future.

12. Maritime causes are: 1. Such causes as concern the respective rights, duties and relations of shipowners (managing owners), captains and crews of vessels; — 2. Causes which concern the hire and freighting of vessels (amongst such causes are law suits in connection with the payment of freight and incidental expenses, causes which concern the obligations of the captains in freight contracts and causes concerning tugs). — 3. Causes which concern average, collision and pilotage; — 4. Causes which concern shipwrecks and the running aground of vessels; — 5. Causes which concern bottomry, respondentia and builders' certificates. (This must now be understood as comprising all causes concerning maritime privileged claims according to Chapter 11 of the Maritime Law.) — 6. Causes which concern marine insurance; — 7. Causes which concern the construction, repairs and the purchase and sale of vessels; — 8. All other causes arising out of contracts and related matters, concerning the navigation of vessels. (So, for example causes concerning undertakings to bring vessels into port by breaking the ice or agreements concerning the purchase of provisions for the immediate supply of vessels.) — To these must be added: 9. According to § 22 of the law of 1st April 1892 with regard to the registration of vessels: Law suits concerning the decisions of the registration office for vessels, bearing on the registered owners' right and title to own Danish vessels.

13. Commercial causes are: 1. All law suits arising between traders — by which term is understood any person carrying on a trade with the object of making a living — which have their origin in and have a direct bearing on matters of commerce; — 2. Causes arising between traders and manufacturers or artisans relating to the purchase or sale of such quantities of goods as are subject to wholesale business, of materials which are used in the working of the factory or trade or for manufacture in or outside the establishment, or of goods which are manufactured in the factory or trade; — 3. Causes concerning operations relating to bills of exchange, banking and brokers' businesses, between bills of exchange agents, bankers and brokers, or concerning disputes between these and tradesmen, and also concerning bargains made according to a broker's note; — 4. Causes arising between traders and insurers with reference to the insurance by the first named of commercial goods against fire; — 5. Causes arising out of the relations between commercial managers, confidential clerks, ordinary employés and their employers, and — 6. All causes arising out of transactions with bills of exchange between traders; — 7. Finally, according to the last paragraph of § 13 non-traders who have had dealings with traders, money-changers, bankers or brokers, which for these latter have had the character of commercial transactions, of money-changing operations, banking or brokers' transactions, are in this event permitted to bring an action against their opponents before the Maritime and Commercial Tribunal. Furthermore the general presumptive rule is that all contracts made between traders and other traders and written documents issued in their names are supposed to concern their trade and for this reason should be dealt with by the Commercial Tribunal, unless the contrary clearly appears from the contents and purpose of the contract. — To these must be added—8. according to § 11 of the Act of 23rd Feb. 1866: Disputes between the manager of a warehouse and the depositor of goods or the holder of warehouse certificates, and according to § 18 of the Act (No. 34) of 30th March 1894, concerning warehouse certificates and guarantee certificates for goods which are stored in warehouse at the Free Harbour of Copenhagen: all disputes as to rights and obligations

for Brugen af urigtige Varebetegnelser: Borgerlige Retstrætter, i hvilke der nedlægges Paastand i Henhold til Bestemmelserne i denne Lov.

**14.** I Sager, der fores ved Sø- og Handelsretten, kunne altid Modfordringer, selv om de ikke i og for sig henhøre under denne Rets Virkekreds, gøres gældende i Modregning, forsaavidt de almindelige Betingelser for en saadan ere tilstede.

**15.** Sager, der høre under Sø- og Handelsrettens Afgørelse, kunne med begge Parter Samtykke ogsaa behandles og paakendes ved den almindelige civile Domstol. Derimod er Sø- og Handelsretten pligtig til, om der end ingen Indsigelse fremsættes mod dens Kompetence, at afvise Sager, der ikke høre under sø- og handelsretlig Afgørelse. — Handels- og Søsager udenfor Kjøbenhavn kunne, naar Parterne ere enige derom, indbringes for Sø- og Handelsretten i Kjøbenhavn som første Instans.

§ 16 omhandler Rettens Virksomhed med Hensyn til Autorisation af Skibsdagbøger, Modtagelse af Soforklaringer, Udmeldelse af Syns- og Skonsmænd til Brug under Sø- og Handelssager eller til Besigtigelse af Skibe og Handelsvarer i Kjøbenhavn m. m.

§ 17 henlægger Behandlingen og Paakendelsen af en Del søretlige Straffesager til Sø- og Handelsretten.

### III. Sagernes Behandling.

Hølge § 18 holder Retten ordentlige Møder en eller flere Dage om Ugen, men i øvrigt kan der sættes Extraret naarsomhelst efter Formandens Bestemmelse til Behandling af paatrængende Sager.

Hølge § 19 kan Forligsmægling overspringes i Vexelsager og paatrængende Sager, saavel som naar Indklagede bor eller har Ophold udenfor Danmark og ikke har nogen her bosat, Sagsøgeren bekendt Fuldmægtig. I andre Sager skal Forligsmægling prøves, og foregaar, hvis Indklagede bor eller har Ophold i Kjøbenhavn, ved en særlig til Retten knyttet Forligskommission, der bestaar af to af Rettens Medlemmer. I Modsætning til, hvad der ellers gælder ved Forligsmægling, have Parterne her ikke nogen Pligt til at give personligt Møde, og Sagførere ere ikke udelukkede fra at møde som Fuldmægtige for Parterne.

**20.** De almindelige Regler om Værneting ere i det Hele anvendelige i Sø- og Handelssager, dog med efternævnte nærmere Bestemmelser: 1. Har Nogen under et Ophold i Kjøbenhavn paadraget sig en Forpligtelse, som ifølge udtrykkelig Aftale eller ifølge, hvad der efter Forholdets Natur maa antages at have været Meningen, skulde opfyldes der, inden han forlod Byen, kan han i den Anledning søges der, uagtet han ikke er tilstede sammesteds; 2. en Handlende, der har Etablissement i Kjøbenhavn, kan søges for Sø- og Handelsretten sammesteds i Anledning af Retshandler, som staa i Forbindelse med den Handelsnæring, han driver der, om han end har Bopæl udenfor Kjøbenhavn; 3. Sager imellem Handels- og Skibs-Interessenter indbyrdes i Anledning af deres Interessentskabsanliggender kunne, saalænge Interessentskabet bestaar, anlægges i Kjøbenhavn, saafremt dets Hoved-virksomhed er der.

**21.** I Stævningen maa altid Sagsøgerens Bopæl angives. Er denne udenfor Staden Kjøbenhavn, maa i Stævningen opgives en der boende Person, med Anførsel af hans Bopæl, hvem Sagsøgte paa Sagsøgerens Vegne gyldig kan gøre de under Proceduren nødvendige Meddelelser og Forkyndelser. I Mangel heraf kunne disse gyldig ske paa Rettens Justitskontor.

Reglerne i §§ 22 og 23 om Forkyndelse af Stævning og Stævnevarslet ere nu i det væsentlige afløste af de almindelige Regler desangaaende i Lov Nr. 55 af 11 Apr. 1890 § 3 og § 1. Dog er bibeholdt den særlige Regel i Lovens § 23, at Rettens Formand i paatrængende Tilfælde kan tillade Stævning med kortere Frist end den

in connection with this Act; — 9. According to the Firms Act § 6: Questions relating to the cancellation of a declaration published in the register of commerce; — 10. According to § 17 of the Trade Marks Act (No. 52) of 11th April 1890: civil legal disputes in which contentions are made in accordance with the provisions of this Act; — 11. According to § 7 of Act No. 70 of 27th April 1894 concerning fines for the use of incorrect designations of goods: civil legal disputes in which contentions are made in accordance with the provisions of this Act.

14. In causes which are dealt with by the Maritime and Commercial Tribunal a set-off may always be produced even if this itself does not belong to the kind of claims which this Tribunal is competent to adjudicate upon, provided that the general conditions allowing such a set-off are satisfied.

15. Causes which the Maritime and Commercial Tribunal is competent to try may, when the parties agree, also be dealt with and adjudicated upon by the ordinary civil Tribunal. On the other hand, the Maritime and Commercial Tribunal is compelled to dismiss causes which it is incompetent to try, even if no objection has been made against the competence of the Tribunal. — Maritime and commercial matters outside Copenhagen can, when the parties agree to this course, be brought before the Maritime and Commercial Tribunal in Copenhagen in the first instance.

§ 16 deals with the competence of the Tribunal in reference to the authorisation of ships' books, the hearing of sea reports, the selection of the experts who assist when maritime and commercial causes are tried or when vessels and commercial goods are examined in Copenhagen etc.

§ 17 decides that certain maritime criminal matters shall be dealt with and adjudicated upon by the Maritime and Commercial Tribunal.

### III. Procedure.

According to § 18 the Tribunal sits one or more days in a week, but the president can decide that extra sittings shall be held when it is necessary for the trial of causes which are urgent.

According to § 19 the negotiations with a view to compromise can be omitted in causes relating to bills of exchange and urgent causes, and also when the defendant has his domicile or is residing abroad without having as his representative a solicitor living in Denmark who is known to the plaintiff. In other causes negotiations with a view to arrive at a compromise should always be undertaken, and they take place if the defendant has his domicile or is residing in Copenhagen, before a Compromise Committee which is dependent on the Tribunal and consists of two of its members. Whereas when otherwise negotiations for a compromise take place the parties must always be present in person, this is not necessary before the Compromise Committee of this Tribunal, and a solicitor may represent them as attorney.

20. The general rules concerning jurisdiction are on the whole applicable in maritime and commercial matters, subject however to the following special provisions: 1. If a person during his stay in Copenhagen has incurred a liability which, according to special agreement, or to the peculiar characteristics of the transaction, ought presumably to have been met before he left the city, action may be taken against him in Copenhagen, although he is not there in person; — 2. A trader who has an establishment in Copenhagen may be sued before the Maritime and Commercial Tribunal there with regard to legal transactions in connection with the trade he is carrying on in that city, although he may have his residence outside Copenhagen; — 3. Law suits between members of commercial and shipping associations brought by reason of the business relations of the parties may, so long as the associations exist, be dealt with by a tribunal in Copenhagen, if the central office of the association is stationed there.

21. In a summons the plaintiff's residence must always be mentioned. If this is outside Copenhagen, a person living there must always be mentioned in the summons, with an indication of his residence in that city, to whom the defendant can with legal force direct the necessary communications and announcements arising out of the proceedings against or in favour of the plaintiff. In the absence of such indication these communications can always be made to the office of the Tribunal.

The regulations in § 22 and 23 concerning the declaration of summons and time for the defendant's appearance in Court are now practically replaced by the general rules on this subject contained in § 3 and § 1 of Act No. 55 of 11th April 1890. The special rule of § 23 of the Act, however, has been maintained, that the president

lovbestemte, og, saafremt Sagsogte opholder sig i Kjøbenhavn, endog til samme Dag; dog maa i dette sidste Tilfælde Forkyndelsen ske for Indstævnte personlig og Afskrift af Kendelsen leveres ham.

Proceduren for So- og Handelsretten er mundtlig, men dog saaledes at den indledes med Tilvejebringelsen af et skriftligt Sagsgrundlag, gerne et eller to — men efter Omstændighederne flere — Indlæg fra hver Side, eller — i Smaasager — i hvert Fald Protokollationer. Retten kan dog i Sagens særegne Beskaffenhed finde Anledning til at foreskrive eller tillade en helt skriftlig Behandling. Rettens Beslutning desangaaende, der ikke behøver at begrundes, kan ikke gores til Genstand for Paaanke (§ 26).

For at fremme Sagernes hurtige Behandling er det gjort Parterne til Pligt for Retsmoderne at give hinanden Meddelelse om, hvad de agte at fremlægge (jvf. de nærmere Regler i §§ 24—31).

Bevisførelsen er skriftlig. Vel skal ifølge § 35 Vidneforsel i Almindelighed finde Sted i Overværelse af samtlige Dommere, der skulle deltage i Sagens Paa-kendelse; men Vidnerne Udsagn blive dog ligesom ellers at nedskrive, og det er efter disse nedskrevne Vidnesbyrd, at der dømmes.

Er der Uenighed mellem Parterne om, hvem Bevisbyrden med Hensyn til et omtvistet Punkt paaligger, eller hvorvidt et saadant er af Interesse for Sagens Afgørelse, kan Spørgsmaalet ifølge § 32 fordres foreløbig afgjort af Retten. Hvis denne da senere, efter at Sagen i sin Helhed er optagen til Dom, ifølge hvad der yderligere er fremkommet under Sagens Forhandling, skulde finde Anledning til at forandre en saadan foreløbig Afgørelse, bør Retten reasumere Sagen og ved en ny Kendelse give Parterne Lejlighed til at foretage det videre fornødne.

Naar det skriftlige Sagsgrundlag og det hele Bevismateriale er tilvejebragt, finder den mundtlige Slutningsforhandling Sted, der dog ikke maa gaa udenfor de af Parterne afgivne skriftlige Fremstillinger med dertil yderligere knyttede skriftlige Bemærkninger (§ 33) — en Regel, der dog formenes at maatte forstås saaledes, at hver af Parterne kan protestere mod, at den mundtlige Forhandling gaar udenfor det skriftlige Grundlag, men ikke saaledes, at Retten *ex officio* skal paase, at saadant ikke sker, undtagen i det Tilfælde, at Indstævnte udebliver.

34. Opstaar der Strid om, hvorvidt en af Parterne i sin mundtlige Udvikling af Sagen eller i sin Procedure overhovedet er gaaet udenfor det skriftlige Grundlag, bliver det, efter at samme er oplæst, af Retten ved en Kendelse at afgøre, hvorvidt saadant er Tilfældet. I øvrigt blive de ommeldte skriftlige Fremstillinger, der overleveres til Retten tilligemed Sagens øvrige Dokumenter, ikke at oplæse under Forhandlingerne. Parternes mundtlige Foredrag protokolleres i Almindelighed ikke.

38. Udenfor de Sager, hvis Genstand, afset fra de efter Sagens Anlæg paa-løbende Renter og Procesomkostninger, ikke naaer 200 Kr., bør Retten ikke indlade sig paa nogen Vejledning, men Formanden kan dog af egen Drift eller paa For-anledning af et af Rettens andre Medlemmer, under eller efter Forhandlingerne, rette Spørgsmaal til Parterne angaaende saadanne Punkter, med Hensyn til hvilke deres mundtlige Foredrag har været uklart.

40. So- og Handelssagers Behandling skal i det Hele fremmes med størst mulige Hurtighed, og navnlig bør der i Reglen kun tilstaaes ganske korte Udsættelser.

41. I Tilfælde af, at nogen af Parterne udebliver eller møder for silde, forholdes overensstemmende med Lovgivningens almindelige Regler.

43. Rettens Kendelser og Domme, der maa være ledsagede af en Angivelse af de Grunde, hvorpaa de ere byggede, kunne enten afsiges umiddelbart efter For-handlingernes Slutning eller senere paa samme Retsdag eller paa en af de nærmest paafølgende Retsdage, som ved Optagelsen angives eller senere meddeles Parterne. De afsiges efter Stemmeferien, saaledes at i Tilfælde af Lighed Formandens Stemme gør Udslaget. I Paadømmelsen kunne kun de Dommere deltage, der have overværet de egentlige Forhandlinger. Disse maa derfor genoptages, naar nogen af de Dommere, der have overværet dem, eller en Del af dem, bliver forhindret fra at være tilstede

of the Tribunal in cases of urgency can permit that a summons be issued and the defendant asked to appear before the Tribunal before the expiration of the term fixed by the law, and, when the defendant lives in Copenhagen, he may even be asked to appear in Court on the day of the summons; in this latter case, however, the summons must be read to the defendant in person and a copy of the decision of the Tribunal handed over to him.

The procedure of the Maritime and Commercial Tribunal is oral; it starts, however, with the production, as a rule, of one or two documents in writing — sometimes more according to circumstances — from each party, or — in minor causes — at any rate with the taking down of verbal declarations. The Tribunal may, however, according to the special nature of the cause, take occasion to order or permit that the whole procedure shall take place in writing. The decision of the Tribunal to this effect, which need not be founded on reasons, cannot be appealed against (§ 26).

In order to promote rapid procedure it is the duty of the parties to communicate with each other before the Tribunal sits as to what they intend to bring forward (see the special rules in §§ 24—31).

The evidence is produced in writing. Although according to § 35 the witnesses as a rule are heard in the presence of all the judges who are to render judgment, the evidence is taken down in writing as usual, and judgment is given according to this written evidence.

If the parties disagree as to which of them has to prove a contested point, or as to whether it is of moment for the decision of the cause, the question may according to § 32 be settled by the Tribunal beforehand. If the Tribunal, however, later on, when the cause in its entirety is ready for judgment according to the evidence which has been produced, should take occasion to alter a decision already arrived at, the Tribunal must resume the cause and by means of a new decision give the parties the opportunity of taking such further steps as may be necessary.

When the written documents and the whole of the evidence have been produced, the concluding procedure is oral, but this must not exceed the written documents already produced by the parties and the further observations in writing which may be connected with them (§ 33) — a rule which, however, is to be understood in the sense that either of the parties can enter a protest that the oral procedure must not exceed the written documents, though this does not mean that the Tribunal *ex officio* shall see that this does not take place, except in the case of the defendant being absent.

34. If a dispute arises as to whether one of the parties in the oral development of the cause has actually exceeded the written documents, the Tribunal has to decide whether this has been the case after the documents have been read before it. Except in this case the said written documents which are handed over to the Tribunal together with other documents of the cause, shall not be read during the proceedings. The verbal propositions of the parties are as a rule not taken down.

38. Except in the causes in which the claim, apart from interest and expenses of the procedure incurred from the commencement of the action, does not amount to 200 kr., the Tribunal ought not to direct the proceedings, but the president can, on his own initiative or at the instance of one of the other members of the Tribunal, during or after the proceedings, address questions to the parties concerning those points with regard to which their oral disquisitions have been obscure.

40. Maritime and commercial causes shall be proceeded with with the greatest possible celerity, and especially the granting of very short postponements shall be the general rule.

41. In case of the absence of either party, or too late appearance in Court, the proceedings shall be in accordance with the ordinary rules of the legislation.

43. The decisions and judgments of the Tribunal, which must be accompanied by an indication of the grounds on which they have been based, can either be given immediately after the proceedings have been closed or later in the day of the sitting of the Tribunal, or on one of the ensuing days when the Court sits, of which at the close of the proceedings or subsequently the parties are informed. The majority of the Tribunal gives its decisions and judgments, and in the case of an equal division the president's vote is final. Only those judges can take part in the judgment who have been present during the hearing properly so-called. This must therefore be re-started

indtil Forhandlingernes Slutning eller fra at deltage i Kendelsens eller Dommens Afsigelse. Derimod blive Vidner og Skonsmænd ikke paany at afhøre.

44. Om Bevis er tilvejebragt eller ikke, afgøres efter de almindelige hidtil gældende Regler, saaledes at fuldt Bevis kan tilvejebringes ikke blot ved de i Loven særlig omhandlede Bevismidler, men ogsaa ved andre Omstændigheder, der ved deres Forening og Samvirkning fremkalde en ligesaa fuld og stærk Overbevisning, navnlig ogsaa ved et enkelt lovfast Vidne i Forbindelse med andre Oplysninger, hvorom Vished er tilstede.

45. De i §§ 27—43 givne Forskrifter ere i det Hele uanvendelige i de Sager, der efter Rettens Kendelse udgaa til skriftlig Behandling, hvilke blive at behandle efter de for Gæsteretsproceduren gældende Regler.

46. I særdeles paatrængende Tilfælde kan Dommen efter vedkommende Parts Paastand gives en saadan Affattelse, at den mod Sikkerhedsstillelse er exigibel uden Hensyn til Paaanke. — Exekution kan ske efter en Domsudskrift.

47. Exekutionsfristen er i Almindelighed tre Dage, regnet fra Dommens Forkyndelse, men Retten kan i særdeles paatrængende Tilfælde efter Partens Paastand og imod Sikkerhedsstillelse forkorte denne Frist.

48. I øvrigt blive de almindelige Proceslove (deriblandt efter Omstændighederne ovennævnte Forordning 25 Jan. 1828 og Vexelprocesloven af 28 Maj 1880) anvendelige ved So- og Handelsretten, forsaavidt de kunne bestaa med de ovenstaaende Forskrifter.

49 omhandler Optagelse af Soforklaringer m. m. ved So- og Handelsretten, jvf. nu herved Lov Nr. 72 af 12 Apr. 1892.

#### IV. Paaankning.

51. De af Kjøbenhavns So- og Handelsret afsagte Domme kunne indankes for Højesteret, men forsaavidt der ikke meddeles Bevilling, ikkun naar Sagens Hovedstol har en Værdi af 200 Kr.

52. So- og Handelssager ere antieiperede til Foretagelse i Højesteret.

53. Paaanke af So- og Handelsrettens Kendelser og Domme maa ske inden 2 Maaneder efter deres Afsigelse, og der kan kun under særdeles Omstændigheder bevilges Oprejsning, der dog ikke kan tilstaaes efter Aar og Dag efter Dommens Afsigelse.

56. Ligesom Paaanke af en af So- og Handelsretten afsagt Dom i det Hele standser dennes fremtidige Virkninger, saaledes bliver navnlig ogsaa Dommens Exekution ordentligvis foreløbig hindret, naar det inden Exekutionens Begyndelse godtgøres, i Kjøbenhavn, at Appelstævning, der bliver at forevise, er udtagen, og udenfor Kjøbenhavn, at der med Posten er afsendt saadan Stævning til Attestation m. v. til Højesterets Justitskontor eller dog bestemt Begæring til en Højesteretsadvokat om uden Ophold at besørge en Stævning udtagen. Oplyses det imidlertid senere for Fogden, at Appellanten har vist Forsømmelse med Hensyn til Stævningens Forkyndelse eller med Anmeldelse paa Højesterets Justitskontor, kan Exekution, uanset den udtagne Appelstævning, foretages.

#### V. Sø- og Handelssagers Behandling udenfor Kjøbenhavn.

61. Udenfor Kjøbenhavn blive So- og Handelssager at behandle overensstemmende med Reglerne for Gæsteretsbehandling, hvilke ogsaa komme til Anvendelse med Hensyn til Paaankningen.

[Dette vil sige, at Behandlingen foregaar efter de for borgerlige Sager almindelig gældende Regler, kun med noget kortere Frister end de ellers gældende og i det Hele med noget større Hurtighed.

Hvad særlig Søsager udenfor Kjøbenhavn angaar, maa nu mærkes Lov Nr. 72 af 12 Apr. 1892 (jvf. Soretten)].



when any of the judges who have been present during the hearing, or during part of it, are prevented from being present until the end of the proceedings or from taking part in giving the decisions or judgments. On the other hand the evidence of witnesses and experts is not to be taken over again.

44. Whether the evidence is complete or not is decided according to the ordinary rules which have been in force up to the present, that is to say, that full evidence can be procured not only by aid of what the law especially mentions as means of proof, but also by means of other circumstances which, by their agreement and coincidence, produce an equally full and strong conviction, and notably by the aid of one competent witness in connection with other information known to be accurate.

45. The rules given in §§ 27—43 are virtually inapplicable in those causes which according to the decisions of the Tribunal are subject to procedure in writing; they are dealt with according to the rules of the "Visitors' Court" procedure.

46. In very urgent cases the judgment, when the interested party demands it, can be couched in such terms as to be capable of execution without appeal, provided that security has been procured. — The judgment can be carried into execution when made out by the Tribunal.

47. The judgment is in general made out to be capable of execution within three days from the day judgment is pronounced, but the Tribunal can in very urgent cases, when the interested party demands it and provided security has been procured, make the judgment capable of execution even within a shorter space of time.

48. Furthermore the ordinary rules of procedure (including, as the circumstances may demand, the above mentioned Ordinance of 25th Jan. 1828 and the Act concerning the procedure in bills of exchange causes of 28th May 1880) are applicable to the procedure of the Maritime and Commercial Tribunal, in so far as they do not contradict the preceding provisions.

49 deals with maritime reports etc. made to the Maritime and Commercial Tribunal; see on this subject Act No. 72 of 12th April 1892.

#### IV. Appeal.

51. The judgments rendered by the Maritime and Commercial Tribunal of Copenhagen can be appealed against before the Supreme Tribunal, but if special permission has not been given, only when the principal object of the cause amounts to 200 kr.

52. Maritime and commercial causes have priority at the Supreme Tribunal.

53. Appeal must be made against decisions and judgments of the Maritime and Commercial Tribunal within 2 months of their being pronounced; only under special circumstances can a restitution be allowed, and never when a long period has elapsed since judgment was given.

56. In the same way as an appeal against a judgment rendered by the Maritime and Commercial Tribunal virtually suspends its further consequences, so also the execution of a judgment is as a rule temporarily suspended when, in Copenhagen, it is proved before the beginning of the execution that an appeal, the document of which has to be shown, has been made; and, outside Copenhagen, that such document has been despatched by post for notification etc. to the secretary of the Supreme Tribunal, or that at any rate counsel has been actually asked to lodge without delay an appeal with the same Tribunal. If, however, it is subsequently proved before the bailiff that the appellant has been negligent with regard to the notification of the appeal or with regard to its notification to the secretary of the Supreme Tribunal, the judgment may be carried into execution in spite of the appeal.

#### V. The procedure in maritime and commercial causes outside Copenhagen.

61. Outside Copenhagen maritime and commercial causes are dealt with in accordance with the rules of the procedure of "Visitors' Court" causes, which also are applicable with regard to appeals in such causes.

(This is to say that the procedure takes place according to the ordinary rules actually in force for civil causes, excepting that postponements are somewhat shorter than those usually applied, and, on the whole, the procedure is somewhat more expeditious.)

In connection with what especially concerns maritime matters outside Copenhagen, notice should be taken of Act No. 72 of 12th April 1892 [see the Maritime Law].)

### C. Exekution og andre Fogedforretninger.

Tvangsfuldbyrdelse (Exekution) iværksættes af en judiciel Embedsmand „Fogden“, der udenfor Kjøbenhavn er identisk med Underdommeren i vedkommende Retskreds, men i Kjøbenhavn er en særlig Embedsmand.

Gaar Exekutionen ud paa at skaffe Rekvirenten et Grundstykke eller en rorlig Ting, der er i Modpartens Besiddelse, kan Fogden, om fornødent med Magt, skaffe Rekvirenten Besiddelsen deraf.

Gaar Exekutionen ud paa at skaffe Rekvirenten Penge, og saadanne ikke forefindes hos Rekviritus, giver Fogden Rekvirenten Udlæg (d. v. s. Panteret med Realisationsbeføjelse) i saa meget af Rekviriti Ejendele, som skønnes nødvendigt til at sikre Rekvirentens Fyldestgørelse. Det udlagte kan Rekvirenten derefter lade stille til Tvangsauktion. Tvangsauktionen opfattes ligeledes som en judiciel Akt og foregaar i Henhold til Reglerne i Lov Nr. 66 af 9 April 1891 om Tvangsauktioner (hvis § 47 dog er ændret ved Lov Nr. 47 af 1 Apr. 1905).

Udlæg ifølge Forlig eller Dom taber enhver Retsvirkning overfor Skyldnerens Konkursbo, naar Konkursen indtræder i Løbet af 10 Dage fra Udlægets Dato (Lov Nr. 30 af 20 Marts 1901), men ellers ikke.

Er det en Handling eller Undladelse, Rekviritus er kendt pligtig til, er Tvangsmidlet successivt forfaldende Boder, der inddrives ved Fogdens Bistand.

Som Grundlag for en Exekution maa foreligge enten en af dansk Domstol afsagt Dom (jvf. om udenlandske Domme S. 18, 19) eller et for en dansk Forligskommission eller Ret indgaaet Forlig. Dog kan en Panthaver i fast Ejendom, naar saadant er vedtaget i Panteobligationen og de øvrige i Lov 29 Marts 1873 § 15 angivne Betingelser foreligge, gøre Udlæg til Forauktionering i Pantet uden forudgaende Dom eller Forlig.

Derhos maa mærkes, at, naar nogen bliver boende i et Hus uden at have Ret dertil, og da navnlig, naar en Lejer trods lovlig Opsigelse vægrer sig ved at flytte, kan han uden forudgaende Dom udsættes med Magt af Fogden (saakaldte „umiddelbare Fogedforretninger“), og paa lignende Maade kan i utvivlsomme Tilfælde en Ejer af rørlige Ting, som en Anden forholder ham, uden forudgaende Dom indsættes i Besiddelsen af disse umiddelbart ved Fogdens Hjælp.

Anvendelsen af Gældsfængsel som Middel til Inddrivelse af Fordringer er i det væsentlige bortfaldet. Kun naar en Person er domt til Foretagelsen af en Handling under Tvang af successivt forfaldende Boder, men der intet Gods findes, hvori Boderne kunne inddrives, kan Gældsfængsel anvendes, indtil Debitor foretager den paagældende Handling, dog højst i 3 Aar, jvf. Konkurslov 25 Marts 1872 § 162. Saalange Kreditor vil opretholde Fængslingen, maa han betale Underholds- og Bevogningspenge uden at kunne forlange disse erstattede af Skyldneren.

En Lov af 29 Marts 1873 har givet Regler for en særlig Art af Tvangsfuldbyrdelse, den saakaldte Udpantning. Den er anvendelig med Hensyn til en Mængde i Loven udtrykkelig nævnte Arter af Fordringer, hvis særlige Karakter bevirker, at deres Størrelse og Rigtighed normalt ikke ville være Genstand for Tvivl, som f. Ex. Skatter og andre offentlige Afgifter, af Øvrigheden fastsatte Alimentationsbidrag o. a. Udpantningen forudsætter ingen forudgaende Retsforfølgning og følger til Dels andre Regler end de for Tvangsfuldbyrdelse sædvanlige.

Overalt, hvor der under en Fogedforretning fremsættes Indsigelser fra Rekviritus eller fra Tredjemand, maa disse tages under Paakendelse af Fogden efter en — ordentligvis gennem Tilforsler til Fogedprotokollen ført — Procedure mellem de Interesserede. Fogdens Kendelse, der kun kan gaa ud paa, hvorvidt han vil — mod eller uden Sikkerhedsstillelse — eller ikke vil foretage det begærede Skridt, kan indankes i Kjøbenhavn for Hof- og Stadsretten, udenfor Kjøbenhavn for vedkommende Overret, og eventuelt videre til Højesteret; men Appellen har ikke samme suspensive Virkning som ellers.

Udenlandske Domme og Forlig kunne ikke direkte fuldbyrdes i Danmark. Kun for svenske Dommes Vedkommende gælder i saa Henseende en Undtagelse

### C. Execution and other functions of the King's Bailiff.

Execution is carried out by a judicial official (the King's Bailiff) who outside Copenhagen is identical with the judge of the first instance of the district concerned, but in Copenhagen is a special official.

If execution has in view to procure the claimant a piece of land or a movable object which is in his opponent's possession, the bailiff can, if necessary by compulsion, make it the claimant's property.

If execution has in view to procure the claimant money, and if the defendant has none in his possession, the bailiff gives the claimant a so-called "Advance" (i. e. a pledge-right involving a right of realisation) of that part of the defendant's property which is considered necessary for the claimant's satisfaction. The claimant can thereupon sell the seized property at a compulsory sale. A compulsory sale by auction is also considered as a judicial action and takes place in accordance with the rules of Act No. 66 of 9th April 1891 concerning compulsory sales of property (of which however § 47 has been altered by Act No. 47 of 1st April 1905).

An "advance" founded on a compromise or judgment loses all legal force in face of defendant's bankruptcy, if the bankruptcy is declared within ten days of the date on which the "advance" has been declared (Act No. 30 of 20th March 1901), but otherwise not.

If the defendant by a judgment is bound to perform an act or to abstain from performance of an act, the means of compulsion consist in fines which successively become due and are recovered by the assistance of the bailiff.

The basis of an execution must be either a judgment rendered by a Danish tribunal (see below, concerning foreign judgments) or a compromise arrived at before a Danish compromise committee or tribunal. The mortgagee of a piece of land can, however, if this has been agreed to in the mortgage deed and the other conditions indicated in § 15 of the Act of 29th March 1873 exist, sell the mortgaged piece of land at a compulsory sale without previous judgment or compromise.

Furthermore, it must be observed that if anyone continues to live in a house without having a right to do so, and especially if a tenant in spite of a legal notice refuses to move, he can without previous judgment be expelled from the house by aid of the bailiff (these operations are called "spontaneous actions" of the bailiff), and similarly in cases which are not doubtful a proprietor of movable objects, which another person withholds from him, can without previous judgment take possession of them by the immediate aid of the bailiff.

Imprisonment on civil process as a means of recovery of claims has in the main been abolished. Only when a person according to a judgment is bound to perform a certain act under the penalty of fines which can be successively recovered, and when he has no property for the recovery of such fines, can imprisonment be inflicted until the defendant has performed the act in question, and only for three years at most (see § 162 of the Bankruptcy Act of 25th March 1872). As long as the claimant is willing to maintain the imprisonment, he has to pay the expenses of maintenance and guards without having a right to claim recovery thereof from the debtor.

An Act of 29th March 1873 has given the rules for a special kind of execution, the so-called "taking pledge". It can be used in connection with many kinds of claims which are distinctly enumerated by the law, from the special character of which their amount and correctness cannot be the subject of any doubt, as e. g. taxes and other public dues, alimentary allowances fixed by the authorities, etc. The "taking pledge" does not assume that previous legal action has taken place, and is carried out in accordance with rules other than those used in the case of an ordinary execution.

Whenever the defendant or a third person takes exception to an operation of a bailiff while it is being carried out, such exception must be judged by the bailiff after a course of proceedings — ordinarily taken down in the report by the bailiff — between the interested parties. The decision of the bailiff as to whether he is or is not willing — with or without security given — to take the required step, can in Copenhagen be appealed against in the Court and Town Tribunal, outside Copenhagen in the Appeal Court of the district, and eventually in the Supreme Tribunal; but the appeal has not the same suspensory effect as in other cases.

Foreign judgments and compromises are in Denmark not subject to immediate execution. As regards Swedish judgments only there exists in this respect an ex-

i Kraft af en mellem Danmark og Sverig d. 25 April 1861 afsluttet Konvention, jvf. Lov af 19 Febr. 1861.

Endvidere bestemmer Lov Nr. 37 af 28 Febr. 1908 § 2, at Domme og Retskendelser, hvorved en Person, der ejer Gods her i Landet, i Udlandet er dømt til at betale Processomkostninger, kunne, naar Dommen er afsagt i en Stat, med hvilken Overenskomst i saa Henseende foreligger, fuldbyrdes i hans her i Landet værende Gods under visse nærmere angivne Betingelser.

Løvrigt er det antaget saavel af Teori som af Praxis, at Fuldbyrkelse af en udenlandsk Dom i Danmark ordentligvis kan opnaaes derved, at der paa Grundlag af den udenlandske Dom rejses en Sag mod Skyldneren ved den paagældende indenlandske Ret efter forudgaaende Forligsmægling, idet den udenlandske Dom da vil blive lagt til Grund uden at underkastes nogen reel Prøvelse. Kun paases det, at den udenlandske Domstol ikke har udstrakt sin Kompetence videre end efter danske processuelle Principle rigtigt, hvorhos den udenlandske Dom selvfølgelig ikke maa støde an mod nogen dansk ufravigelig Lov.

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Medens der ikke i dansk Ret findes noget til tysk Rets „Mahnverfahren“ svarende Institut, er der derimod en ret vidtgaaende og i Praxis ret misbrugt Adgang til at indlede en Retsforfølgning med at gore Arrest i Modpartens Ejendele.

Der kræves i Praxis kun, at vedkommende Kreditor overfor Fogden kan gøre det nogenlunde rimeligt, at han har en forfalden Fordring paa Modparten. Det forlanges ikke, at Fordringen skal være konstateret ved skriftligt Bevis, eller at der paavises nogen særlig Grund til at befrygte, at Debitor, hvis Arresten ikke foretages, skal afhænde eller forstikke sit Gods. Beskyttelsen mod, at der gøres Arrest for uretmæssige Krav, bestaar væsentligt deri, at Rekvirenten er pligtig at yde Erstatning, hvis Arresten senere findes ulovlig, og ordentligvis maa stille Fogden Sikkerhed, hvoraf Erstatningen eventuelt kan udredes. Kun, hvor der begæres Arrest for Vexelkrav, kan ingen Sikkerhed fordes af Rekvirenten, medmindre Skyldneren under Arrestforretningen fremsætter en af de Indsigelser, som overhovedet kunne komme i Betragtning under et Vexelsøgsmål. (Lov 28 Maj 1880 § 9.)

Skyldneren kan altid afværge Arrest ved at stille Sikkerhed for Fordringen. Som Følge deraf kan der ikke gøres Arrest for en Fordring, for hvilken der alt i Forvejen foreligger betryggende Sikkerhed.

Arrest gøres af Fogden, og har den Virkning under Strafansvar at udelukke Rekviritus fra at disponere over de arresterede Ting. Derimod hindrer Arresten ikke andre Kreditorer, der have behorigt Exekutionsgrundlag, fra at gore Udlæg i det arresterede, og Arresten taber sin Virkning, naar den herboende Skyldner her i Landet gaar fallit.

Arrest paa Person (Gældsængsel) kan kun foretages undtagelsesvis, nemlig dels i Tilfælde, hvor det drejer sig om Fremtvingelse af en Handling (dette som Modsætning til Betaling af Penge) og hvor Gældsængsel efter opnaaet Exekutionsgrundlag i Henhold til det ovf. S. 18 nævnte vilde kunne anvendes (Konkurslovens § 163), dels paa Personer (Indlændinge eller Udlændinge), der staa i Begreb med at forlade Landet for bestandigt eller paa ubestemt Tid, i Anledning af Fordringer, for hvilke de uden Hensyn til Arrestværnetingsbestemmelserne (jvf. den ndf. nævnte Pl. 30 November 1821) ifølge Lovgivningens almindelige Regler vilde kunne sagsøges ved danske Retter (Konkurslovens § 164, som den er ændret ved Lov Nr. 160 af 18 December 1897).

Saasnart Arrest paa Gods eller Person er gjort, skal Arresten justificeres gennem et paa almindelig Maade anlagt Søgsmåal, under hvilket Arrestens Lovlighed prøves, og som ender med, at Arresten enten underkendes eller stadfæstes.

Dette Justifikationssøgsmåal skal anlægges mod Skyldneren ved Retten paa det Sted, hvor et Søgsmåal angaaende den Fordring, som det Hele gælder, efter almindelige Værnetingsregler skulde anlægges. Da nu Hovedreglen er den, at Søgsmåal skulle anlægges ved Debtors Hjemting, vilde dette — hvis ingen særlig Regel

ceptional rule according to a convention concluded between Denmark and Sweden on April 25th 1861 (see Act of 19th February 1861).

Furthermore, § 2 of Act No. 37 of 28th Feb. 1908 provides that those judgments and judicial decisions given abroad in accordance with which a person possessing property in this country has been rendered liable to pay the expenses of the proceedings, may, when the judgment has been given in a State with which an agreement to this effect exists, be carried out by seizure of his property in this country under certain special conditions.

Furthermore, it is assumed in theory as well as in practice that a judgment given abroad can as a rule be carried into effect in Denmark when an action based on the foreign judgment is brought against the defendant before the competent Danish Tribunal after previous negotiations with a view to arrive at a compromise, and the foreign judgment is in such case used as a basis without its details being inquired into. But care is taken that the foreign tribunal has not exceeded its competence according to the Danish principles of procedure, and the foreign judgment must of course not violate any positive Danish law.

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Whereas Danish law is devoid of any proceedings corresponding to the "procedure by notification" of German law, it yet accords very generally the privilege, much abused in practice, of initiating a law suit in order to arrest the opponent's property.

It is in practice only necessary that the interested creditor should make it appear probable to the King's bailiff that he has a claim against his opponent which is due. It is not required that the claim should be substantiated by means of a written document, or that any special reason should be given for the fear that the debtor may dispose of or conceal his property if the arrest does not take place. The protection against arrest for unjustifiable claims chiefly consists in the claimant's being compelled to give compensation if the arrest should be subsequently found to be unlawful, and as a rule also in his giving the bailiff a security out of which compensation can eventually be procured. Only when arrest is asked for on account of claims arising out of bills of exchange is no security required from the claimant unless the debtor during the arrest sets up one of those defences which it is the rule to take into consideration in a law suit arising out of transactions dealing with bills of exchange (Act of 28th May 1880 § 9).

The debtor can always prevent the arrest by giving security for the claim. Consequently an arrest cannot be carried out for a claim for which sufficient security has previously been given.

The arrest is carried out by the King's bailiff, and has the effect of preventing the defendant under penal responsibility, from disposing of the arrested objects. On the other hand, the arrest does not prevent other creditors, who have claims sufficient for carrying out an execution, from seizing the arrested property, and the arrest loses its force if the debtor, living in Denmark, becomes bankrupt.

*Arrest of the person* (imprisonment on civil process) can be carried out only in exceptional cases, viz., in the first place in cases where it is a question of compelling the performance of an act (as distinguished from the payment of money), and where imprisonment, after the right of execution has been obtained according to what has been said above on p. 18, would be applicable (§ 163f of the Bankruptcy Act); and secondly in the case of persons (natives or foreigners) who intend to leave the country permanently or for an indefinite period, when claims are concerned for which they could be sued, without having regard to the provisions as to competent jurisdiction in case of imprisonment (see the below-mentioned Placard of 30th November 1821), before a Danish Tribunal according to the ordinary rules of the legislation (§ 164 of the Bankruptcy Act, as modified by Act No. 160 of 18th December 1897).

As soon as an arrest of property or person has been carried out, it must be justified by an action brought in the ordinary way, during which the legality of the arrest is inquired into, and the action ends in the arrest being either quashed or confirmed.

This action of justification must be brought against the debtor before the Tribunal of the place where an action in reference to the claim in its entirety has to be brought according to the general rules of jurisdiction. As the principal rule now is that an action must be brought in the debtor's jurisdiction, this would — if no

galdt — normalt medfore, at Arrest i udenlands boende Skyldnerses herværende Gods ikke kunde gores. Her griber imidlertid de særlige i en Plakat af 30 November 1821 foreskrevne (med moderne internationale Regler tildels kun daarlig stemmende, men alligevel endnu gældende) Forskrifter ind. Det hedder i denne Plakat:

„Da det har været ulige Meninger underkastet, hvor den, som, i Medhold af Landets Love, har erhvervet Arrest paa en Udlændings Person eller Gods, har at anlægge den Sag til Arrestens Forfølgning, som L. 1—21—20 foreskriver, saa bliver det, i Overensstemmelse med Sagens Natur, Danske Lovs Aand og de i fremmede Love for lige Tilfælde gældende Regler, herved fastsat som autentisk Fortolkning over Loven:

„Sagen skal i fornævnte Tilfælde i Eet og alt forfølges ved det ordinære Værneting paa det Sted, hvor Arresten er gjort; og, forsaavidt denne maatte være iværksat i Effekter, som en Udlænding maatte besidde under forskellige Jurisdictioner her i Riget, da ved den, hvor Arresten først er foretaget, meduindre Sagen, efter sin særdeles Beskaffenhed, maatte henhøre under nogen anden Ret her i Riget. Der-som den Paagældende ikke personlig opholder sig her i Riget, eller har nogen anden Mandatarins end Godsets Ihænde-haver, vil Arrestens Forfølgning kunne ske efter Stævning til denne. I øvrigt skal Arrestimpetranten ikke ved Debtors Fallissement i Udlandet, om samme endog maatte være erklæret, inden Arresten blev iværksat, hindres i at forfølge Arresten paa foranførte Maade og i sin Tid gore Exekution i det arresterede Gods.“

Disse Regler blive anvendt i temmelig stor Udstrækning i Praxis, navnlig naar Udlændinge have et Pengetilgodehavende hos Personer, boende i Danmark, og da paa den Maade, at vedkommende Udlændings (indenlandske eller udenlandske) Kreditorer gore Arrest i bemeldte Tilgodehavende og forfølge Arresten ved Sogsmaal mod denne den udenlandske Debtors herværende Debitor.

Forbud. Naar Nogen kan oplyse, at en Anden foretager eller maa befrygtes i en nær Fremtid at ville foretage Handler, der ere i Strid med den Paagældendes ved Sogsmaal gennemtvingelige Rettigheder, kan han — ordentligvis dog kun mod Sikkerhedsstillelse — faae Fogden til at nedlægge Forbud mod saadan Adfærd, altsaa f. Ex. mod krænkende Avismeddelelser, uberettiget Reklame, Byggen i Strid med en Udsigtsservitut osv. Formaalet med Nedlæggelsen af Forbud er at opnaa en hurtig og effektiv Beskyttelse mod Retskrænkelser, som ellers kun kunde rammes ved en Dom, der maaske først kan erhverves efter længere Tids Forløb. Beskyttelsen bestaar dels i, at man kan faae den, der overtræder Forbudet, idømt Boder, dels i, at man efter Omstændighederne kan forlange Politiets umiddelbare Indskriden til Gennemtvingelse af Fogedforbudet.

Et Forbud bortfalder, hvis den, der har faaet det nedlagt, ikke strax anlægger Sogsmaal for at faae det godkendt ved Dom.

## D. Voldgift.

Særlige Lovregler om Voldgift findes ikke i dansk Ret, bortset dels fra Lov Nr. 39 af 30 Marts 1889 om Lærlingeforholdet, hvis § 18 henviser visse Tvistigheder mellem Mester og Lærling til en Voldgiftskommission, bestaaende af Stedets Øvrighed og to Mænd, hvoraf hver af Parterne vælger den ene, dels fra Lov Nr. 84 af 19 Apr. 1907, der forsøgsvis indfører tvungen Voldgift ved Tvistigheder angaaende Handel med Husdyr, forsaavidt Parterne ikke ved Handlens Afslutning have taget Forbehold om, at Tvistigheder, der maatte opstaa af Handlen, skulle afgøres ad almindelig Retsvej.

Imidlertid er der Intet til Hinder for, at to Parter naarsomhelst gyldig kunne enes om at henvise Afgørelsen af deres retlige Tvistigheder til Voldgiftsmænd, og, naar saadanne indenfor Grænserne af den dem ved Parternes Overenskomst tillagte Bemyndigelse have truffet deres Afgørelse, er denne bindende for Parterne paa samme Maade, som om disse kontraktmæssig havde truffet en Aftale af samme Indhold som Voldgiftskendelsen. Voldgiftskendelsen kan ikke direkte forlanges eksekveret af Fogden; men, vil den ene Part ikke godvillig efterkomme den, maa

special rule existed — normally have the consequence that an arrest of property belonging to a debtor living abroad could not be carried out. Here, however, the special regulations of a Placard of 30th November 1821 intervene (ill-suited, moreover, to modern international law, but still in force notwithstanding). This Placard reads as follows:

“As various opinions have been advanced as to where a person, who, according to the laws of the country, has obtained an arrest of the person or of the property of a foreigner, has to bring the action which Danish law (1—21—20) provides for in pursuance of the arrest, the following interpretation will, according to the character of the affair, the spirit of Danish law and the rules available in foreign laws for similar causes, be considered as authentic:

“The action in the above-mentioned case shall exclusively be brought before the ordinary tribunal of the place where the arrest has been made; and, in so far as this has been done with regard to effects which a foreigner may possess in various jurisdictions of this country, before the Tribunal of the jurisdiction where the arrest has first been made, unless the cause, owing to its special character, is required to be brought before another tribunal of this Kingdom. If the interested person does not live in this country himself, or if he has no other representative than the holder of the goods, the prosecution of the arrest can take place when a summons has been sent to the last-named person. Furthermore, the arresting creditor shall not be prevented, by reason of the debtor's bankruptcy abroad, even if this has been declared before the arrest was made, from prosecuting the arrest in the manner indicated, and in due time effecting a seizure in execution of the arrested goods.”

These rules are in practice used extensively, especially when foreigners have a money claim against persons living in Denmark, and they are applied in a manner which permits the creditors (Danish or foreign) of the interested foreigner to make an arrest for such money claim and follow up the arrest by an action against the debtor who lives in this country of the foreign debtor.”

*Inhibition.* When a person can show that a third person contemplates, or may be suspected of contemplating in the near future, the performance of acts contrary to the rights of the interested person which are actionable at law, he can — generally, however, only on giving security — ask the bailiff to inhibit such acts: e. g. the communication of abusive paragraphs to the papers, unauthorised advertisements, a building which obstructs the neighbour's view, etc. The object of the inhibition is the rapid and efficient protection against a violation of rights, a protection which otherwise could be obtained only by means of a judgment, perhaps not obtainable until after the expiration of a long period of time. The protection consists in the facts that, in the first place, the party who violates the inhibition can be fined; secondly, that, according to circumstances, the police can be asked to intervene immediately in order to carry out the inhibition of the bailiff.

An inhibition loses its force if the party who has obtained it does not immediately follow it up by bringing an action with a view to having it confirmed by a judgment.

#### D. Arbitration.

There are no special provisions made with regard to *Arbitration* in Danish Law, excepting, first, in Act No. 39 of 30th March 1889 on the condition of apprentices, of which § 18 refers certain disputes between masters and apprentices to an arbitration committee consisting of the authority of the place and two men, of whom each party chooses one: secondly, in Act No. 84 of 19th April 1907, which, by way of experiment, provides compulsory arbitration in disputes in connection with the trade in domestic animals, if the parties when the bargain was made did not agree to the reservation that disputes arising out of the bargain should be settled according to ordinary judicial procedure.

There is, however, nothing to prevent two parties from legally referring the settlement of their disputes to arbitrators whenever they choose, and when the arbitrators, within the limitations of the authorization given them according to the agreement of the parties, have come to a decision, this decision is as binding on the parties as if they had come to an agreement by contract similar to the decision of the arbitrators. The arbitrators' award cannot be immediately carried out by the bailiff; but if one of the parties will not voluntarily submit to it, his opponent must

den anden Part sagsøge ham paa sædvanlig Maade for paa Grundlag af Voldgiftskendelsen at faae exigibel Dom over ham.

I Praxis spille Voldgiftsafgørelser en stor Rolle, og i Kjøbenhavn findes bl. a. faste Bedømmelses- og Voldgiftsudvalg for Kornhandlen, for Handlen med Foderstoffer, for Frohandlen, for Kaffehandlen og for Smørhandlen samt et Voldgiftsudvalg for Jærn- og Metalbranchen, hvilke virke i Henhold til de af den kjøbenhavnske Grosserersocietets Komité vedtagne Regler og de af samme autoriserede Slutsedler.

Af disse Udvalg er det dog i Praxis kun Udvalget for Kornhandlen og Udvalget for Foderstofhandlen, der have større Betydning.

De for disse to Udvalg gældende (i 1909 vedtagne) Regler ere saalydende:

#### Almindelige Bestemmelser.

§ 1. Udvalget har til Formaal at undersøge og afgøre Tvistigheder, som i Kornhandlen [Foderstofhandlen] maatte opstaa mellem Køber og Sælger, hvad enten de angaa Varernes Kvalitet eller andre Spørgsmaal vedrørende den afsluttede Handel.

2. Et Medlem af Grosserer-Societetets Komité (eller en af Komitéen valgt Grosserer) er Formand for Udvalget, og dettes Medlemmer, der som Handlende, Fabrikanter eller Mæglere maa være interesserede i Korn- [Foderstof-] forretningen, vælges af Grosserer-Societetets Komité. Valget, der gælder for et Aar, foregaar inden Aarsskiftet, og Udfaldet bekendtgøres af Komitéen ved Opslag paa Børsen.

3. Efter Valget sammentræde Medlemmerne og vælge af deres Midte to eller flere Næstformænd.

4. Formanden har den administrative Overledelse af Udvalgets Virksomhed. Han bestemmer, hvilke Medlemmer der skulle deltage i en Sags Afgørelse, hvorved der i hvert enkelt Tilfælde tages Hensyn til, at de Medlemmer, der vælges, maa antages at have Indsigt i Sager af den Art som den foreliggende.

Sker der fra nogen af de i en Sag interesserede Parter Indsigelse imod et Medlem, afgør Formanden, om Indsigelsen maa anses berettiget. Er et Medlem paa en eller anden Maade interesseret i Afgørelsen af det foreliggende Spørgsmaal, eller han af anden Grund anser sig for inhabil til at fungere i Sagen, da tilkalder Formanden et andet Medlem, for saa vidt han anser Indsigelsen for berettiget, eller finder Anledning til at fritage det vedkommende Medlem for at fungere.

I Formandens Forfald fungerer en af Næstformændene.

5. Udvalgets Mellemkomst kan kun paakaldes, naar Parterne ifølge den indgaaede Handel have forpligtet sig til at lade Differencer afgøre ved Udvalget, eller, hvis dette ikke er betinget, Parterne da forud skriftligt forpligte sig til at underkaste sig Udvalgets Kendelse som endelig og forbindende.

6. Almindelige Kvalitets-Bedømmelser foretages af 3 Medlemmer, hvorimod Kvalitets-Bedømmelser af afskibede Varer i Henhold til eif. Slutsedlens § 7 I og Afgørelse af „andre Tvistigheder“ foretages af 5 Medlemmer, deriblandt Formanden eller en af Næstformændene. Kan der om Afgørelsen af en Sag ikke opnaas Enstemmighed imellem de fungerende Medlemmer, tilkalder Formanden yderligere 2 Medlemmer, der da i Forening med de allerede fungerende afgør Sagen ved Stemmefflerhed.

7. I en dertil bestemt Protokol indføres et Resumé af Sagen, samt den afsagte Kendelse, som i Reglen afgives uden Motivering. Protokollen underskrives af alle de ved Bedømmelsen fungerende Medlemmer.

En Udskrift af den afsagte Kendelse, alene underskrevet af Formanden, tilstilles hver af Parterne.

8. Under en Sags Paakendelse maa ingen af de i Sagen interesserede Parter være til Stede.

9. Medlemmerne af Udvalget fungere uden Vederlag. De for Kendelser indkomne Beløb overføres, efter at Udvalgets løbende Udgifter ere fradragne, til et specieit Understøttelsesfond, der bestyres af Komitéen, men uddeles efter Indstilling af Udvalget særlig til saadanne Trængende, der ere eller have været knyttede



bring an action upon it in the ordinary way in order to obtain an executory judgment based on the decision of the arbitrators.

In practice, awards by arbitration play a prominent part, and in Copenhagen there are, amongst others, permanent committees for estimation and arbitration in questions relating to the corn trade, the feeding stuffs, seeds, coffee and butter trades, and an arbitration committee operating in connection with the iron and metal trade. These committees operate according to the rules adopted by the Committee of the Wholesale Society in Copenhagen, and according to the brokers' notes authorised by the same committee.

Of these committees, however, only that operating in connection with the corn trade and that in connection with the trade in feeding stuffs are in practice of much importance.

The actual rules, adopted in 1909, of these two committees are as follows:

#### General provisions.

§ 1. The object of the committee is to inquire into and to decide disputes which may arise in the corn trade (the trade in feeding stuffs) between buyer and seller, whether they concern the quality of the goods or other questions relating to the bargain concluded.

2. A member of the Committee of the Wholesale Society (or a wholesale merchant nominated by the Committee) is the chairman of the committee, and its members who, as traders, manufacturers or brokers, must be interested in the corn (feeding stuffs) trade, are nominated by the Committee of the Wholesale Society. The nomination, which is for one year, takes place before the end of the year, and the result is published by the committee by means of a placard affixed outside the Exchange.

3. After the nomination the members meet and elect from amongst their number two or more vice-chairmen.

4. The chairman is the administrative director of the operations of the committee. He decides which members shall take part in an award, and he endeavours in each case to select members reputed to be acquainted with matters similar to that which is to be decided upon.

If an objection is made against a member by any of the interested parties, the chairman decides whether the objection is to be considered justified. If a member is interested in any way in the decision of the question before the committee, or if for some other reason he considers himself incompetent to take part in the decision, the chairman will call upon another member if he considers the objection justified, or if he has any reason to excuse the member in question from sitting on the case.

In the case of the absence of the chairman, one of the vice-chairmen is in charge.

5. The intervention of the committee can only be asked when the parties, according to the bargain concluded, have pledged themselves to let their disputes be decided by the committee, or, if this has not been stipulated, when the parties beforehand have pledged themselves in writing to accept the decision of the committee as final and binding.

6. Ordinary estimations with regard to the quality of goods are made by three members, whereas estimations with regard to the quality of goods shipped *c. i. f.* according to the broker's note § 7 I, and decisions in "other disputes" are undertaken by five members, one of them being the chairman or one of the vice-chairmen. If the acting members are not unanimous in an award, the chairman summons two other members, who, together with the members already sitting, decide the matter by way of a majority.

7. In a report drawn up for the purpose is entered a summing-up of the affair and the decision arrived at, the latter as a rule being given without reasons. The report is signed by all the members who take part in the decision.

A copy of the decision pronounced, signed by the chairman alone, is handed over to each of the parties.

8. During the deliberations in a matter neither of the interested parties is allowed to be present.

9. The members of the committee receive no remuneration. The amounts received in connection with the decisions of the committee are, after the current expenses of the committee have been deducted, carried to a special benefit fund, which is administered by the committee, and which according to the suggestions

til Korn- [Foderstof-] handelen, eller deres Efterladte. Forhenværende Medlemmer af Udvalget eller deres Efterladte, som ere trængende, have fortrinsvis Adkomst til Understøttelse.

10. Dersom Nogen af Parterne i en paakendt Sag undlader at efterkomme Udvalgets Kendelse, skal Udvalgets Formand paa dertil givne Anledning indberette dette til Komitéen, der da tager Bestemmelse om, hvorvidt Vedkommendes Navn skal opslaaes paa den „sorte Tavle“.

Saalænge Nogens Navn maatte være paa den „sorte Tavle“, maa Udvalget ikke optage nogen Sag til Bedømmelse eller Voldgift, i hvilken den Paagældende er den ene af Parterne, og som vedrører en Forretning, der er afsluttet, efter at Opslaget er sket.

### Om Bedømmelse af Kvalitet.

11. Begæring om Bedømmelse indgives skriftligt paa Borskontoret, og skal, foruden at være ledsaget af Bedømmelsesproverne, udtagne paa behørig Maade, eller paa en af Parterne godkendt Maade, endvidere være ledsaget af: a) Slutsedlen paa det omtvistede Parti eller den Overenskomst, der er traadt i Slutsedlens Sted. — b) Forseglet Salgsprove, for saa vidt denne findes paaberaabt ved Handelen og er nødvendig til Bedømmelsen. — c) Konnossement, naar saadant foreligger. — d) Attest for Provetagningen [og — i Kornhandlen — eventuelt for konstateret Kvalitetsvægt].

I Begæringen maa de Mangler ved Partiet, hvorom Udvalgets Kendelse æskes, bestemt angives. Omfatter Begæringen Bedømmelse af Varens Sundhed, maa dette udtrykkelig være nævnt, for at Bedømmelsen kan foretages snarest mulig.

Indgives Begæringen ikke af Parterne i Forening, men kun af een af disse, maa den og samtlige Bilag indsendes saavel i Original som Kopi.

Saasnart Begæringen og Proverne ere modtagne paa Borskontoret, og Formanden anser en hurtig Bedømmelse af disse for nødvendig, tilsiges de Medlemmer, der skulle fungere, og Bedømmelsen foregaar om muligt endnu samme Dag, men Kendelse afgives dog kun samtidig, for saa vidt Sagen ellers foreligger tilstrækkelig oplyst.

Hvis der om et Parti, solgt „in loco“, maatte være fremsat den Paastand, at det i en eller anden Henseende lider af Mangler, der mulig kun utilstrækkeligt kunne bedømmes efter de indleverede Prøver, kunne Udvalgets fungerende Medlemmer, hvis de anse en Besigtigelse af selve Partiet for hensigtsmæssig, foretage en saadan.

### Om Afgørelse af andre Tvistigheder.

12. Begæring om Udvalgets Kendelse indsendes til Borskontoret, indeholdende en klar og koncise Fremstilling af Sagen og de Punkter, hvorom Udvalgets Kendelse ønskes, og skal være ledsaget af Slutsedlen, Kontrakten, Stadfæstelsen af Handelen eller den i § 5 nævnte Forpligtelse, samt Oplysninger og Bevisligheder vedrørende de fremsatte Paastande.

Indgives Begæringen kun af een af Parterne, skal saavel den som samtlige Bilag indsendes baade i Original og Kopi.

Modparten bliver derefter ved Tilsendelse af Kopierne underrettet om Sagens Fremkomst, og erholder en passende Tidsfrist til Tilsvar. Fremkommer saadant Tilsvar ikke indenfor den givne Frist, betragter Udvalget den indgivne Fremstilling som godkendt og afsiger Kendelse paa Grundlag af samme.

Dersom de fungerende Medlemmer finde, at en Tvist ikke egner sig til Afgørelse af Udvalget, forelægges Sagen for det samlede Udvalg, som da afgør, om den skal afvises, eller i modsat Fald vælger andre Medlemmer til at paakende Sagen.

13. Udvalget har Ret til af Parterne af forlange yderligere Oplysninger og Fremlæggelse af saadanne Dokumenter, som det maatte anse for nødvendige for at kunne paakende Sagen.

14. Formanden har Ret til at foretage Afgørelser fra den almindelige Forretningsgang i Tilfælde, hvor han maatte finde særlig Anledning dertil.

of the committee is distributed to such needy persons as have been connected with the corn (feeding stuffs) trade, or their heirs. Previous members of the committee or their heirs, if needy, have the first right to assistance from the fund.

**10.** If one of the parties in a case which has been decided fails to comply with the decision of the committee, the chairman of the committee, as soon as the opportunity offers, shall inform the committee of the omission, and this body then decides whether the name of the interested party shall be published on the "black board".

As long as the name of any person is on the "black board", the committee must not accept for estimation or arbitration any case in which this person is one of the parties, and which concerns a business operation concluded after the publication took place.

#### Estimation of quality.

**11.** A request for an estimation is sent in writing to the office of the Exchange, and, besides being accompanied by the samples to be estimated, which must have been selected in a proper manner or in a manner agreed upon by the parties, shall also be accompanied by: a) The broker's note regarding the goods under discussion, or the agreement which has taken the place of the broker's note; — b) A sealed sample of the goods sold in so far as it has been referred to in the bargain and as it may be necessary for the estimation; — c) The bill of lading, if there is one; — d) A certificate concerning the selection of the sample (and — in the corn trade — eventually by a certificate of the correct weight according to quality).

In the request the defects of the goods on which the committee is asked to give its opinion must be distinctly stated. If the request comprises the appreciation of the wholesomeness of the goods, this fact must be distinctly mentioned, in order that the appreciation may take place as soon as possible.

If the request is not made by the parties jointly, but only by one of them, the original as well as a copy of the request and all the documents must be sent to the committee.

As soon as the request and the samples have been handed in to the office of the Exchange, and the chairman considers a speedy estimation of them necessary, the members who are to decide in the matter are summoned, and the estimation takes place if necessary on the same day, but the decision is given immediately only when the matter in other respects is sufficiently elucidated.

If with regard to goods sold "in loco" the assertion has been advanced that they suffer in any way from defects which can only be estimated incompletely from the samples already in the hands of the committee, the acting members can, if circumstances warrant such a course, view the goods themselves.

#### Decision of other disputes.

**12.** A request for a decision of the committee is sent to the office of the Exchange and contains a clear and concise presentation of the matter and the points upon which the decision of the committee is desired, and should be accompanied by the broker's note, the contract, the ratification of the bargain or the pledge mentioned in § 5, in addition to information and proofs with regard to the allegations advanced.

If the request is made by only one of the parties, the original and a copy of the request as well as all the documents should be sent to the office of the Exchange.

The opponent is then informed of the request through the copy being sent to him, and is allowed a certain space of time for an answer. If such answer is not forthcoming within the given period, the committee considers the presentation of the maker as accepted and gives its decision on that basis.

If the sitting members are of opinion that a dispute is not suitable for decision by the committee, the matter is submitted to the entire committee, who then decide whether it shall be dismissed or, in the contrary case, nominate other members to judge it.

**13.** The committee has a right to request further information of the parties, and the production of such documents as it may consider necessary for the decision of the matter.

**14.** The chairman has a right to depart from the ordinary procedure in cases where he deems there is sufficient reason to do so.

### Om Udtagelse af Prover.

15. Af Varer her paa Stedet, i Havnen eller paa Reden paatager Udvalget sig ved dertil udmeldte Mænd at lade udtage Bedommelsesprover. Begæring derom indgives skriftlig paa Borskontoret. Vederlaget til Mændene fastsættes af Formanden efter Omstændighederne.

### Om Betaling for Kendelser.

16. For Kendelser betales fra 25 til 500 Kroner, saaledes som det i hvert enkelt Tilfælde fastsættes af Udvalget.

Gebyret erlægges altid til Udvalget af den af Parterne, der har indgivet Begæringen, uden Hensyn til hvem Betalingen efter Kendelsen kommer til at paahvile, og paalægges i Reglen den Part, som Sagen gaar imod; men det er forbeholdt Udvalget at paaligne det paa Parterne efter sit Skøn. Formanden kan forlange, at et efter hans Skøn passende Beløb erlægges som Depositum ved Begæringens Indgivelse.

17. Udvalget affatter hvert Aar Regnskab over sine Indtægter og Udgifter, hvilket Regnskab revideres af de af Grosserer Societetet valgte Revisorer. Aarsoverskudet vil være at overføre til Korn [Foderstof] udvalgets Understøttelsesfond, for hvilket særligt Regulativ foreligger.

## Systematisk Fremstilling af den danske Handelsret.

### I. Handelsstanden.

#### a) Handlende.

Nogen almindelig Definition af Begreberne „Handel“, „Handelsforretninger“ og „Handlende“ findes ikke i dansk Lovgivning.

Man bestemmer i Almindelighed Begrebet „Handel“ i egentlig Forstand som den i Erhvervsøjemed udøvede Virksomhed, der bestaar i gennem Køb og Salg af Varer at søge disse bragt fra Producent til Konsument.

Under „Begrebet Handel“ i videre Forstand indbefattes dernæst jævnlig tillige forskellige Virksomheder, der staa i Forbindelse med og understøtte den egentlige Handel, saaledes Virksomheden som Leverandør, Speditør, Kommissionær, Assurandør, Mægler, Reder, Vexellerer, Bankier, Handelsagent, Auktionsholder, Forlægger og Fragtfører.

Ved Handelsforretninger vil man først og fremmest forstaa alle Retshandler, der ere Led i en Virksomhed, der betragtes som Handel i egentlig Forstand, men eventuelt tillige en ubestemt større eller mindre Kreds af Forretninger, der paa en eller anden Maade staa i Forbindelse med den egentlige Handelsvirksomhed.

Ved Handlende forstaas i Reglen Personer, der drive Handel i egentlig Forstand, og Begrebet er saaledes langt snævrere end den tyske Handelslovbogs „Købmands“-Begreb. Forskellige danske Love opstille da ogsaa udtrykkelig „Handlende“, „Haandværkere“, „Fabrikanter“ og „Beværtningsdrivende“ som sideordnede Begreber, der gensidig udelukke hverandre<sup>1)</sup>.

Undtagelsesvis benyttes Ordet „Handlende“ som Betegnelse for Enhver, der har Varer at sælge (jvf. saaledes ndf. S. 30).

Som Følge af Manglen af en almindelig dansk Handelslovbog har det ikke samme Betydning her som andetsteds skarpt at afgrænse det almindelige Begreb „Handlende“, og det saa meget mindre, som der paa de Omraader, hvor særlige Love opstille visse særlige Regler for „Handlende“ (saaledes Fimaloven, Loven om Handelsbøger, Konkursloven og Sø- og Handelsretsloven) findes nærmere Bestemmelse af, hvad vedkommende Lov for sit Vedkommende forstaaer derved (jvf. ndf.).

<sup>1)</sup> Yderligere maa vel mærkes, at selve Benævnelsen „Købmand“ indenfor dansk Næringsret er et Underbegreb indenfor Begrebet „Handlende“, idet det i næringsretlig Forstand betegner en saavel fra „Grossererens“ som fra „Detailhandlerens“ forskellig Person, nemlig den, der har Bergerskab som „Købmand“, hvilket Bergerskab kun meddeles udenfor Kjøbenhavn og giver Ret til Handel baade en gros og en detail.

### Selection of samples.

15. The committee undertakes by aid of men especially nominated for the purpose, to select samples for estimation out of goods on the spot, in the port or in the roadstead. The request to this effect is made in writing at the office of the Exchange. The fee of these men is fixed by the chairman according to circumstances.

### Payment for decisions.

16. The decisions cost from 25 to 500 kroner, according to the committee's stipulations in each case.

The charge is always paid to the committee by the party who has presented the request, without taking into consideration which of the parties according to the decision given ought to pay the fee, which as a rule is placed to the charge of the losing party; but the committee has the right to divide the fee between the parties as it thinks fit. The chairman can demand that an amount deemed suitable shall be deposited on the presentation of the request.

17. The committee every year issues a balance sheet of its receipts and expenditures, audited by the auditors appointed by the Society of Wholesale Merchants. The annual surplus, if there is one, is transferred to the benefit fund of the committee for corn (feeding stuffs), for which there are special regulations.

## Systematic exposition of Danish Commercial Law.

### I. The Mercantile Class.

#### a) Traders.

There exist no general definitions of the terms "commerce", "commercial operations" and "traders" according to Danish law.

In general the term "commerce" properly so-called is understood to mean operations carried on for the purpose of making profit, and consisting in the purchase and sale of goods for transference from producer to consumer.

The term "commerce" in a wider sense comprises generally various operations connected with and facilitating commerce properly so-called, as for instance those of purveyors, forwarding agents, commission agents, insurers, brokers, ship-owners, money changers, bankers, commercial agents, auctioneers, publishers and carriers.

"Commercial operations" are in the first instance understood to be all legal transactions forming part of an operation which is considered as commerce properly so-called, but in actual fact the term comprises a somewhat extensive sphere of activities which in various ways accompany "commercial operations" properly so-called.

Traders are as a rule persons carrying on commerce properly so-called, and the term is consequently much narrower than the term "trader" of the German Commercial Code. Various Danish laws also specifically use the expressions "traders", "handicraftsmen", "manufacturers" and "caterers" as independent terms which exclude each other reciprocally<sup>1</sup>).

As an exception the term "trader" is used to designate any person who has goods for sale (see to this effect below p. 30).

In consequence of the absence of a general Danish Code of Commerce it is not of the same importance here as elsewhere to define too closely the general term "trader", and this the less so as in matters for which special laws provide certain special rules for "traders" (as for instance the Firms Act, the Act concerning Commercial Bookkeeping, the Bankruptcy Act and the Maritime and Commercial Tribunal Act) it is specially indicated what is meant by the term as used in these particular laws (see below).

<sup>1</sup>) It must furthermore be observed that the term "merchant" according to Danish trading law is subsidiary to the term "trader", as in this connection it designates persons differing so much as the "wholesale merchant" from the "retailer", i. e. a person who has a license as a "merchant", a license which can be obtained only outside Copenhagen and which entitles the holder to trade both as a wholesale merchant and as a retailer.

Et særligt Handels-Begreb opstiller den i 1906 vedtagne Lov om Køb, idet det i sammes § 4 hedder:

„Ved Handelskøb forstaaes i denne Lov Køb, som indgaas mellem Handlende i eller for deres Bedrift. Som Handlende anses herved enhver, der gør sig til Bedrift at afhænde dertil indkøbte Varer, at drive Vexellerer- eller Bankforretning, Forsikringsvirksomhed, Kommissionshandel, Forlagsvirksomhed, Apotek, Beværtning, Haandværk eller Fabrik, at overtage Udførelsen af Bygnings- eller Anlægsarbejder eller at befordre Personer, Gods eller Meddelelser. Dog anses ikke som Handlende den, som uden anden Medhjælp end sin Ægtefælle, sine Børn under 15 Aar og sit Hustyende driver Beværtning, Haandværk, Befordringsvirksomhed, eller saadan ringe Handel, hvortil ikke kræves særlig Adkomst, eller hvortil Borgerskab udstedes uden Betaling.“

For at en Handlende gyldig kan forpligte sig ved Kontrakter, maa han have den dertil fornødne Myndighed, hvilket ordentligvis vil sige, at han maa være fyldt 25 Aar. Dansk Rets Regler om Myndighed — hvilke ere ens for Handlende og for Ikke-Handlende — ere i Hovedtrækkene disse: a) Personer under 18 Aar ere umyndige saavel i personlige Forhold som med Hensyn til Formuen og staa under Værgemaal. Retshandler afsluttes paa deres Vegne af Værgen, og i flere Tilfælde kræves Ovrighedens Godkendelse, hvorhos deres Formue i Reglen bestyres af en særlig Statsinstitution (Overformynderiet). Umyndige antages dog frit at kunne raade over selverhvervet Gods saavel som over, hvad der er skænket dem til fri Raadighed. — b) Personer mellem 18 og 25 Aar (mindreaarige) ere personlig myndige (d. v. s. kunne bestemme deres Opholdssted og disponere over deres Arbejdskraft og saaledes ogsaa retsgyldig forpligte sig til Arbejdsydelser), hvorimod de ere formueretlig ufuldmyndige, idet de skulle have en Kurator til at bistaa dem ved Formuens Bestyrelse og ikke uden hans Medvirken kunne forpligtes ved Retshandler vedrørende Formuen. Personer, der ere fyldte 22 Aar, kunne dog af Justitsministeriet faae en særlig Fuldmyndighedsbevilgning, naar Omstændighederne tale derfor. De under a) og b) angivne Regler gælde for Mænd og ugifte Kvinder. — c) Gifte Kvinder ere myndige i personlige Forhold uden Hensyn til Alder, hvorhos de nu ifølge Lov Nr. 75 af 7 April 1899 i formueretlig Henseende have samme Myndighed som ugifte Kvinder og altsaa blive fuldmyndige ved 25 Aars Alderen. Kun gælder den særlige Regel, at Retshandler, hvorved Hustruen gør sig ansvarlig eller medansvarlig for Mandens Gæld, kræve Ovrighedens Godkendelse. Bortset fra denne Regel, er Stillingen den, at de af en gift Kvinde paa 25 Aar eller derover indgaaede Kontrakter ere gyldige og forbindende for hende og kunne søges fyldestgjorte af hendes Særeje eller Selverhverv, men af Fællesboets Midler først, naar Fællesskabet er ophørt. — d) Enker, fraskilte og fraseparerede Kvinder ere uden Hensyn til Alder fuldmyndige. — e) Myndige Personer kunne paa Grund af Alderdom, Vanvittighed, Odselhed eller andre Aarsager af Ovrigheden erklæres umyndige under Værgemaal. Umyndiggørelsesdekretet skal tinglyses. — f) Åfsindige, der ikke kunne have noget fornuftigt Begreb om, hvad de foretage sig, ere helt umyndige.

Dansk Ret tillader i al Almindelighed Sammenslutninger i hvilket som helst lovligt Ojemed, altsaa ogsaa i handelsmæssigt. Selskaber og Foreninger kunne saaledes dannes, uden at dertil behøves Iagttagelse af særlige Former eller særlig Autorisation; og saadanne Foreninger og Selskaber anerkendes uden videre som Retssubjekter under Anvendelse af de almindelige formueretlige Principleer (om Kontraktfrihed, Tro og Love, Fuldmagt osv.). Selv hvor Anmeldelse (f. Ex. til Handelsregistret) eller en ministeriel Tilladelse (som f. Ex. ved Livsforsikrings-selskaber) kræves, er Anmeldelsen eller Tilladelsen ingen Betingelse for, at Selskabet gyldig kan træde i Virksomhed som Retssubjekt overhovedet eller optræde som Procespart.

Vanskelighed kan imidlertid opstaa, naar en saadan juridisk Person skal sagsøges, idet der ikke i gældende dansk Procesret findes nogen almindelig Værnetingsregel, hvorefter en juridisk Person kan sagsøges paa det Sted, hvor den er dannet, eller hvor den har sin Virksomhed, eller hvor nogen af Bestyrelsen boer, men kun findes forskellige, specielle Værnetingsregler af saadan Art, hvilke langt fra dække

The Act of 1906 concerning purchase allots a wide special definition to the term trade, and its § 4 reads to this effect:

"By commercial purchase in this Act is understood to be purchase concluded between traders in their trade or in pursuance of it. A trader is considered to be any person who makes it his business to dispose of goods bought for this purpose, to carry on a business as money changer, to engage in banking and insurance, to act as commission agent, publisher, chemist or caterer, to carry on a handicraft or factory, to undertake building or construction work, or to transport persons or goods, or to carry messages. A person who by the aid of his wife, his children under 15 years of age and his domestic servants, carries on a catering business, a handicraft, a transport business, or such minor commerce as does not require a special license, or the license of which costs nothing is not however considered a "trader".

In order that a trader may legally bind himself by contracts, he must have the necessary capacity, which as a rule is to say that he must have completed his 25th year. The provisions of Danish law with regard to coming of age — which are similar for traders and non-traders — are in the main as follows: a) Persons under 18 years are minor as well with regard to their persons as to their property, and are under guardianship. Their guardians conclude legal transactions on their behalf, and in many cases the approval of the authorities is required, and their fortune is as a rule administered by a special State institution (the superior guardianship). Minors are, however, supposed to have their free liberty as to property acquired by themselves, and also as to what has been given them for their free disposal; — b) Persons between 18 and 25 years (minors) are of age as far as their persons are concerned (i. e. they can choose their residence and dispose of their labour and can consequently legally bind themselves to work), whereas they are minor as far as their property is concerned, in so far that they must have a guardian who assists them in its management, and not without his co-operation can they legally undertake any transaction in connection with it. Persons who have completed their 22nd year can, however, obtain a special concession to rank as being of age from the Ministry of Justice when circumstances are in favour of this. The rules given under a) and b) are applicable to men and unmarried women; — c) Married women are of age as far as their persons are concerned without regard to their age, and now, according to Act No. 75 of 7th April 1899, they have with regard to property the same legal powers as unmarried women and therefore become of age when they have completed their 25th year. The special rule, however, is in force that legal transactions by which the wife takes upon herself the responsibility or co-responsibility of her husband's debt, require the approval of the Superior Authority. Apart from this rule, the position of married women of 25 years and more is that contracts concluded by them are valid and binding for them and can be realised by means of their own fortune or labour, but not by means of the common estate until the conjugal partnership has ceased to exist; — d) Widows and divorced and separated women are of age without regard to their age; — e) Persons who are of age, on the ground of old age, lunacy, extravagance, or for other reasons may be declared by the Authorities incapable of managing their affairs, and be placed under guardianship. A decree to this effect is proclaimed in public; — f) Insane persons, who can give no reasonable account of their undertakings, are entirely without legal capacity.

Danish law, as a rule, allows all combinations for any legal purpose, and consequently also for trading purposes. Societies and unions can therefore be formed without any necessity of taking into account special formalities or special authorisation; and such unions and societies are without any further consideration recognised as legal persons under the application of the general principles of the law of property (concerning liberty of contract, faith and laws, powers of attorney, etc.) Even where a declaration (e. g. in the commercial register) or the permission of a Secretary of State (e. g. in the case of life insurance societies) is required, the declaration is not made nor the permission given as a condition upon which a society can with legal force begin its operations as a legal person in general or act as a party in a law suit.

Difficulties may, however, arise when an action is brought against a legal person, there being no general rule of jurisdiction in the Danish law of procedure now in force according to which a legal person must be sued at the place where the body has been established, or where it is operating, or where a member of its administration has his residence; there are only various special rules of jurisdiction to this effect

alle Tilfælde. Hvor en saadan særlig Værnetingsregel mangler, maa Sogsmaalet rettes mod de enkelte ledende Deltagere ved deres personlige Værneting.

For at Nogen (Enkeltmand eller Selskab) kan drive Handel i Danmark, maa han, jvf. Næringsloven af 29 Dec. 1857, i Reglen hos Ovrigheden have erhvervet et særligt Bevis, der, naar det udstedes til Mand i Kobstæderne, benævnes „Borgerskab“, men naar det udstedes til Kvinder eller paa Landet benævnes „Næringsbevis“. Forskellen mellem Borgerskab og Næringsbevis er i Nutiden en ren Navneforskel.

Uden saadan Adkomst kan dog Enhver handle med de Ting, der ere Genstand for „Frihandel“.

Hertil regnes: 1. Handel med Natural-Produkter af Landbrug, Kreaturhold, Havedyrkning og Fiskeri samt alle Slags Skoveffekter og Tørv, selv om disse Produkter have modtaget nogen Bearbejdelse, naar denne dog ligger indenfor Grænserne af Landbo- og Husflid (altsaa f. Ex. Smør, Ost, Gær, Hor, Hamp, saltet og roget Kød, Flæsk eller Fisk og endvidere Kalk, Tag- og Mursten og almindeligt Pottemagerarbejde) og desuden med alle Landmandens andre Husflidsprodukter (linnede og uldne Varer, Reb, Kurve, Trævarer osv.). Betingelsen er dog, at Produkterne ere opkøbte paa Landet i Danmark, at der ikke holdes fast Udsalgsted, og at Varerne ikke udskibes til Udlandet. — 2. Handel med Heste og Kvæg. — 3. Handel med uformalede Kornvarer i en Kobstad. Paa Landet kan enhver der bosiddende (men ingen Kobstadboer) handle saavel med uformalede som med formalede Kornvarer samt Brød, dog uden Omloben (Lov 15 Apr. 1854). — 4. Handel med i Danmark trykte Kattuner. — 5. Handel med Agerdykningsredskaber, — 6. Handel med forskellige mindre betydelige Husholdningssager saasom Mælk, Fløde, Æg, Kartoffler, Grøntsager, indenlandsk Frugt, Tørv, Sand og vistnok ogsaa fersk Fisk. — 7. Brændehandel i Kjøbenhavn. — 8. Handel med Værdipapirer og — 9. Handel med faste Ejendomme. Endvidere har — 10. Enhver, der driver lovligt Erhverv som Haandværker eller Fabrikant (hvis Afsætning af det af ham selv frembragte ikke henregnes til Handel i egentlig Forstand, jvf. ovf. S. 23) en vis Ret til at drive egentlig Handel uden dertil at behøve særligt Adkomstsbevis. Denne Ret omfatter a) andre til hans Fag hørende Frembringelser, — b) alle Varer, som ved Behandling i hans Næringsbrug ere undergaaede en væsentlig Forandring, selv om Produktet i øvrigt henhører under andres Næringsvej — c) Maskiner, Redskaber og Materialier, som høre til Faget, dog at disse kun maa afhændes til andre Mestre og Fabrikanter af samme Fag. — Dernæst har 11. Enhver Værtshusholder og Restauratør Ret til at sælge Brød samt indenlandsk Brændevin og Øl og enhver Konditor Ret til at forhandle Likorer, destillerede af Druebrændevin, og Chokolade. — Endelig har 12. Saavel danske som fremmede Skippere en i Henseende til Tid, Sted og Salgsmaade nojagtig afgrænset Salgsret (se nærmere Næringslovens §§ 38—40 og Lov 23 Maj 1873 §§ 5 og 6).

Saagodtsom al anden Handel er ifølge de „Næringsvedtægter“, der i Medfør af Næringsloven udfærdiges hvert 5te Aar af Indenrigsministeriet, „bunden“ d. v. s. forudsætter, at den, der driver saadan Handel, har erhvervet Borgerskab<sup>1)</sup>.

Et saadant udstedes i Kobstæderne af Magistraten, paa Landet af Politimesteren, og kan forlanges af enhver Mand, enhver ugift Kvinde, enhver fraskilt, frasepareret eller forladt Hustru eller enhver Enke, naar følgende Betingelser foreligge: 1. Vedkommende maa være fuldmyndig (jvf. S. 24). Forladte Hustruer stilles dog med Hensyn til at erhverve Næringsadkomst lige med fraskilte og fraseparerede Hustruer, skøndt disse ere fuldmyndige uden Hensyn til Alder, medens forladte Hustruer ligesom andre gifte Kvinder, ugifte Kvinder og Mænd først ere fuldmyndige, naar de blive 25 Aar. — 2. Vedkommendes Bo maa ikke være under Konkursbehandling. — 3. Vedkommende maa ikke ved Dom være funden skyldig til Strafarbejde eller være under Tiltale for et Forhold, der kan medføre saadan Straf. Dog kunne saadanne Personer opnaa en særlig begrænset Bevilling, hvorhos Virkningen af

<sup>1)</sup> Naar der her og i det følgende tales om „Borgerskab“, underforstaaes stadig „eller Næringsbevis“.



which are not by any means applicable to all cases. Where such a special rule of jurisdiction does not exist, the action must be brought against every responsible member in his own jurisdiction.

Any person (individual or association) desirous of practising a trade in Denmark must, as a rule, according to the Trades Act of 29th Dec. 1857, have obtained from the authority a special certificate which, when issued to a man living in a town, is called "License", but when issued to a woman or a person living in the rural districts is called "Trading certificate". The difference between "License" and "Trading certificate" is now purely nominal.

Without such permission, however, any person can deal in goods which are "Free commerce" articles.

To this category belong: 1. Trade in the natural products of agriculture, the breeding of cattle, gardening and fishing, together with all kinds of products of forestry and peat, even if these products have been subject to a certain amount of treatment, when such treatment is within the limits of agriculture and the home industries (as for instance, butter, cheese, yeast, flax, hemp, salted and smoked meat, bacon or fish, and also lime, tiles and bricks and ordinary pottery), and, further, the trade in all other products of the home industries in rural districts (linen and woollen goods, ropes, baskets, wooden articles, etc.). The conditions, however, are that the products shall be bought in the rural districts of Denmark, that there shall be no regular shop, and that the goods shall not be exported; — 2. Trade in horses and cattle; — 3. The trade in unground cereals in a town. In the rural districts, any person who is living there (but no inhabitant of a town) can deal alike in ground and unground cereals and bread, on condition that he does not hawk the goods for sale (Act of 15th April 1854); — 4. The trade in cotton prints manufactured in Denmark; — 5. The trade in agricultural implements; — 6. The trade in various household goods of lesser importance, as milk, cream, eggs, potatoes, vegetables, fruit grown in the country, peat, sand and no doubt also fresh fish; — 7. Trade in firewood in Copenhagen; — 8. Traffic in negotiable securities, and; — 9. Traffic in landed property. Again — 10. Any person who is carrying on a lawful business as a handicraftsman or a manufacturer (whose sale of the goods produced by himself cannot be considered as trade, properly so-called, see above p. 23) has a decided right to carry on trade properly so-called without acquiring a special license. This right comprises: a) All other products in his special line; — b) All goods which through the manipulation of his trade have undergone a substantial alteration, even if the products thereby come within the province of another trade; — c) Machinery, implements and materials appertaining to his trade; they must, however, be transferred only to masters and manufacturers in the same trade. Furthermore; — 11. Every innkeeper and restaurateur has a right to sell bread as well as spirits and beer produced in the country, and every confectioner has a right to deal in distilled liqueurs, brandy made from grapes and chocolate. — Finally — 12. Danish and foreign captains of vessels have a right of sale limited as to time, place and manner of selling the goods (for further particulars see the Trading Act § 38—40 and Act of 23rd May 1873, §§ 5 and 6).

Nearly all the other trades, by virtue of the "Trading regulations" drawn up in accordance with the Trades Act every five years by the Minister of the Interior, are "non-free", i. e. are pursued on the assumption that those engaging in them have acquired a license<sup>1</sup>).

A license is issued in Copenhagen by the magistrate, in the rural districts by the commissioner of police, and can be demanded by any man, any unmarried woman, any divorced, separated or abandoned wife, or any widow, when the following conditions exist: 1. The interested person must be of age (see § 24). Abandoned wives, however, as regards acquiring trading licenses, are on a par with divorced and separated wives, although the latter are of full capacity without taking their age into account, whereas abandoned wives and other married women, unmarried women and men, are not of full capacity until they have completed their twenty-fifth year; — 2. The interested person's property must not have been subjected to the administration of the bankruptcy court; — 3. The interested person must not have been condemned to penal servitude, nor be under trial for an offence which might entail such

<sup>1</sup>) When here and in the following pages "License" is mentioned, "or Trading certificate" is always implied.

Forbedringshusarbejde som Hindring for Næringsadkomst bortfalder efter 5 Aars hæderlig Vandel, saafremt Straffen kun har været een Gang idomt. Hvad særlig Marskandiserhandel angaar, kræves, at Vedkommende overhovedet ikke er Politiet bekendt fra nogen ufordelagtig Side. — 4. Endvidere maa Vedkommende, bortset fra traktatmæssige Undtagelser, enten have Indfødsret eller mindst 5 Aar have opholdt sig og ernæret sig ærlig her i Riget samt have erhvervet Forsorgelsesret i den Kommune, hvor han vil nedsætte sig, eller ogsaa stille Sikkerhed for, at han og Familie i Tilfælde af Trang ville blive modtagne til Forsorgelse andetsteds. (jvf. nærmere S. 29 ff.)

Indenrigsministeriet kan dispensere fra disse Betingelser.

Borgerskab kan meddeles Aktieselskaber og andre anonyme Selskaber, i hvis Ovrigheden forelagte Vedtægter intet ulovligt indeholdes. Drives i øvrigt Handel eller anden bunden Næring af flere i Forening, skal enhver af disse, som tager umiddelbar Del i Forretningerne, erhverve Borgerskab. Enhver, der fyldestgør de lovbestemte Betingelser, har Ret til at forlange Borgerskab udstedt og kan i Nægtelsestilfælde klage saavel til højere Ovrighed som til Domstolene.

Det fra gammel Tid kendte Købstadprivilegium er endnu til Dels opretholdt. Paa Landet kan det saaledes ikke tilstedes at drive Groshandel, Købmandshandel eller Detailhandel mindre end  $1\frac{1}{2}$  Mils Afstand fra nærmeste Købstads Aksektorv, Høkerhandel og Marskandiserhandel i mindre end 1 Mils Afstand; dog gælde disse Begrænsninger ikke for de Kjøbenhavn omgivende Landdistrikter, hvorhos de i de senere Aar ligeledes ere ophævede for en Mængde Købstæders Vedkommende.

Borgerskab paa Handel kan som Regel ikke forenes med Borgerskab paa Haandværk.

Betalingen for Næringsadkomst erlægges en Gang for alle med taxtmæssig fastsatte Beløb, varierende fra 224 Kr. til 1 Kr.

Borgerskab paa Handel lyder i Reglen paa enten Købmandshandel, Groshandel eller Detailhandel.

Borgerskab paa Købmandshandel — hvilket kun meddeles udenfor Kjøbenhavn — giver den største Ret, nemlig til Handel saavel fra aaben Butik som fra andre Udsalgssteder, saavel i stort som i smaat og med alle Slags Varer; kun undtages Forhandling i smaat af de Medicinalvarer, som ere Apotekerne forbeholdte, samt Marskandiserhandel, hvortil kræves særskilt Borgerskab.

Borgerskab som Grosserer (Groshandler) giver Ret til at sælge alle Slags Varer i stort (en gros), d. v. s. i Partier, hvis Størrelse ikke er under de Kvanta, som for en stor Del Varers Vedkommende findes angivne paa en Liste, der er vedføjet Næringsloven, dog at de til andre Handelsberettigede kunne sælge Partier af hvilkensomhelst Størrelse, ligesom de have Ret til at sælge enhver Varesort, hvad enten den staar paa Listen eller ej, i Kvantiteter til en Salgspris af mindst 40 Kr. — Grosserere maa ikke holde aaben Butik. — De ere i Kjøbenhavn, uden særlig Indmeldelse, Medlemmer af Grosserer-Societetet.

Detailister (Detailhandlere) endelig maa kun sælge fra aaben Butik og kun i smaat (en detail) d. v. s. stykkevis eller i Partier, der ikke naae den for Groshandel satte Grænse. Denne Begrænsning gælder dog ikke Handel med de S. 25. nævnte Produkter af Landbrug m. m. Undtagne fra Detailisternes Handelsret er Apotekervarer og de fleste brugte Sager.

Der er Intet til Hinder for, at een og samme løser Borgerskab baade som Grosserer og Detailhandler.

Baade Købmænd, Grosserere og Detailhandlere kunne selvfølgelig købe Varer i Partier af hvilkensomhelst Størrelse, og de kunne lade deres Forretning omfatte faa eller mange Varesorter, ligesom de lyste.

Særskilt Borgerskab, der udtrykkelig kun berettiger til Handel med visse bestemte Varesorter, og derfor gjerne er billigere, kan faaes paa Vinhandel, Tømmerhandel, Materialisthandel, Høkerhandel, Brændevinhandel, Marskandiserhandel, Handel med gamle Bøger og gammelt Jærn samt paa den saakaldte „ringe Handel“. Til Handel med Klude, Ben, Glasskaar o. lign. kræves en særlig Bevilling.

punishment. Such person, however, can obtain a specially limited license; furthermore, detention in a house of correction, after five years' clean record, ceases to be an obstacle to obtaining a license, provided such punishment has been suffered only once. As regards especially the trade in second hand goods, it is required that the interested person shall not be generally known to the police in an unfavourable manner; — 4. Finally, the interested person must, apart from exceptions in connection with treaties, either have a right as a native or for five years at least have lived and made an honourable living in this kingdom, and have acquired the right to assistance according to the Poor Law in the parish where he intends to establish himself, or can guarantee that he and his family, in case of need, will receive poor relief elsewhere. (See for further details bottom of page 29 *et seq.*).

The Ministry of the Interior can exempt parties from these conditions.

Limited partnerships with share capital and joint stock companies can obtain a license when their regulations have been submitted to the authorities and their regulations do not contain any illegal matter. If, again, trade or other "non-free" business is carried on jointly by several persons, each of them who has active work to do in the business is required to obtain a license. Any person fulfilling the conditions of the law has a right to ask for a license, and can in case of refusal make a complaint both to the superior authority and to the legal tribunals.

The well-known ancient privilege of "trading towns" is still partially maintained. Thus, in the rural districts it is not permissible to carry on a wholesale, a merchant's or a retail business, within a distance of one and a half miles from the central market-place of the nearest town: nor the provision trade or trade in second hand goods within one mile. These restrictions are, however, not applicable to the rural districts near Copenhagen, and they have also been abolished of late years as regards many other towns.

A license for a commercial business cannot as a rule be given simultaneously with a license for a profession.

The fee for a license is paid once for all at a price fixed by tariff and varying from 224 kr. to 1 kr.

A license for a commercial business is as a rule made out either for a merchant's, a wholesale or a retail business.

A license for a merchant's business — which can only be given outside Copenhagen — is the widest license, as it entitles the holder to deal in goods both in an open shop and in other places where a bargain can be made, wholesale and retail and in all kinds of goods; the only exceptions are the trade in pharmaceutical products, which is reserved for chemists, and the trade in second hand goods, which requires a special license.

The license for a wholesale business entitles the holder to sell all kinds of goods in large quantities, i. e. in lots which must not contain less than a certain quantity for which the scale, as regards a great many goods, is given in a list appended to the Trading Law; the wholesale dealers can, however, sell whatever quantities they like to other traders, and they have also a right to sell any kind of goods, whether mentioned or not in the list, in quantities for a sale price amounting to at least 40 kroner. — Wholesale dealers must not do business in open shops. — They are, in Copenhagen, without any special declaration, members of the Society of Wholesale Dealers.

Finally, retailers must sell only in open shops and retail, i. e. in pieces or lots which do not attain the limit fixed for the wholesale trade. This restriction is, however, not applicable to trade in agricultural produce, etc., mentioned on p. 25. Pharmaceutical products and most things which have been used are excluded from the retail trader's license.

There is nothing to prevent the same person from obtaining a license as a wholesale dealer and as a retailer.

Merchants, as well as wholesale dealers and retailers can consequently purchase goods in lots of whatever quantities they choose, and they can at their discretion deal in few or many kinds of goods.

A special license, which expressly entitles the holder to deal in certain definite kinds of goods, and which is therefore much cheaper, can be obtained for the trades in wine, timber (used for building purposes), drugs, huckster's goods, spirits, second hand goods, second hand books and old iron, and for the so-called "minor trades". A special license is required for the trade in rags, bones, broken glass, etc.

Den, der har erhvervet Borgerskab, maa kun nedsætte sig indenfor den Borgerskabets udstedende Myndigheds Omraade, men har Lov til at sælge til andetsteds boende.

Vil Vedkommende senere nedsætte sig i en anden Købstad eller Land-Jurisdiktion, maa nyt Borgerskab erhverves.

Ingen Handlende maa have mere end een Butik i hver af Jurisdiktionens Kommuner. Derimod er der intet til Hinder for, at samme Person paa samme Tid løser Borgerskab i flere Jurisdiktioner.

Næringsadkomst er strængt personlig og kan derfor ikke gyldigt laanes eller lejes ud; det falder ikke i Arv, men ophører ved Vedkommendes Død. Dog kan Enken fortsætte sin afdøde Mands Næringsvej paa hans Borgerskab, indtil hun indgaar nyt Ægteskab; samme Ret tilkommer den Hustru, hvis Mand er bortdømt.

Endvidere ophører Retten efter Næringsadkomsten, naar Vedkommende ved Dom er funden skyldig til Strafarbejde, Retten som Marskandiser tillige i Tilfælde af visse bestemte mindre Forseelser.

En Kvinde, der har erhvervet Næringsbevis som ugift, kan, selv efter at have indgaaet Ægteskab, drive Forretning paa dette, naar Forretningen er hendes Særeje og hendes egen Raadighed undergiven. Tilsvarende Regel maa gælde, naar en forladt eller frasepareret Hustru, der har faaet Næringsbevis, fornyer Samlivet med Manden.

Næringsadkomsten bortfalder ikke, fordi den Paagældende bliver umyndiggjort eller gaar fallit. Værgen eller Konkursboet kan fortsætte Handlen paa Vedkommendes Vegne, medmindre Fallenten selv fortsætter enten med Konkursboets Tilladelse eller ved andres Hjælp.

Ved Auktion ere Handlende kun berettigede til at sælge paa det Sted, hvor de have Borgerskab og have drevet Næring mindst et Aar, og derhos kun de Varer, som ellers ere berettigede til at falholde og i de samme Kvantiteter (Lov 23 Maj 1873, § 6). Denne Begrænsning gælder dog ikke Ting, der ere Genstand for Frihandel (jvf. S. 25).

Om Omløben med Varer haves forskellige af Næringsloven stadfæstede ældre Regler. Herefter er al Omløben med Varer, være sig paa Landet eller i Købstæder, for at falbyde dem („Bissekramhandel“) forbudt. Dog er det tilladt Enhver, der paa Landet har opkøbt Produkter af Landbrug m. m. (jvf. S. 25) at omfore dem til Salg paa Landet og i Købstæderne i Husene eller paa Gaderne.

Om Provehandel gælder, at det er tilladt enhver Handelsberettiget eller hans Agent at indfinde sig i hvilkensomhelst Købstad med Prover af sine Varer og efter dem at afslutte Handel saavel med Handlende som med andre, dog at selve Proverne ikke maa sælges. Derimod er paa Landet ifølge Lov 23 Maj 1873 § 8 al Provehandel forbudt undtagen med Produkter af Landbrug m. m. (jvf. S. 25), eller naar Handlen finder Sted mellem Handelsberettigede indbyrdes og kun omfatter Varer af den Slags, som ogsaa Køberen er berettiget til at forhandle.

Næringsloven afskaffer al Torvetvang. Derimod bestaar stadig Retten til paa Købstadtorvet paa Torvedage at opstille Landvæsenprodukter til Salg, navnlig Fødevarer, levende Kreaturer, Brændsel og Foder, naar blot Forhandleren selv har produceret dem eller dog opkøbt dem paa Landet.

Medens Krammarkeder bortfaldt 1882, kunne stadig Heste- og Kvægmarkeder afholdes, hvor Indenrigsministeriet tillader det. Paa saadanne maa Enhver foruden Heste og Kvæg sælge Produkter af Landbrug m. m., der ere opkøbte paa Landet, samt Agerdykningsredskaber. Og dernæst maa enhver i en Købstad bosat Næringsberettiget paa ethvert Marked, der afholdes paa hans Hjemsted, sælge de Varer, som han ellers er berettiget til at falholde (Lov 23 Maj 1873 § 7). Udlændinge, der mangle saadan Næringsadkomst, maa ikke sælge paa Markeder (Danske Lovs 3—8—1).

Enhver, der driver Handel i Strid med de i det foregaaende angivne Regler kan under en af det Offentlige rejst Politisag idømmes Boder for ulovlig Næring.

A person who has obtained a license must only establish himself within the district of the authority which has issued the license, but he is entitled to sell goods to persons living elsewhere.

If the same person subsequently wants to establish himself in another town or in a rural district he must obtain another license.

No trader can have more than one shop in each of the parishes of the district. On the other hand, there is nothing to prevent the same person from acquiring licenses in several districts.

A license is strictly personal and it is therefore illegal to lend or let it to anyone; it cannot be inherited, but ceases with the interested person's death. A license, however, entitles a widow to continue her deceased husband's trade until she contracts a fresh marriage; the same right belongs to a wife whose husband has absconded.

Furthermore, a license ceases when the interested person has been condemned to penal servitude, and in a like manner the license to exercise a trade in second hand goods becomes void in the case of certain minor offences.

An unmarried woman who has obtained a license can, even after having contracted marriage, carry on a trade by virtue of the same license when the business is her own property and to be disposed of as she chooses. A corresponding rule holds good when an abandoned or a separated wife who has obtained a license resumes co-habitation with her husband.

A license does not cease to be valid when the interested person is declared incompetent to manage his or her own property or enters into bankruptcy. The guardian or the bankruptcy estate can continue to carry on the business on the interested person's behalf, unless the bankrupt himself continues to carry on the business with the permission of the bankruptcy estate or through the assistance of other persons.

Traders are entitled to sell goods by auction only at the place where they have obtained a license and have carried on a business for at least a year, and moreover only such goods as they are entitled to offer for sale and in the quantities permitted (Act of 23rd May, 1873, § 6). This restriction is however not applicable to articles which are subject to "free commerce" (see p. 25).

With regard to the hawker's trade there exist various old regulations which have been confirmed by the Trading Act. According to these regulations, hawking goods, whether in the rural districts or in the towns, in order to offer them for sale ("peddling") is prohibited. Any person, however, who has purchased agricultural produce, etc. (see p. 25) in the rural districts is allowed to hawk such goods for sale in the rural districts and the towns, at houses or in the streets.

With regard to trade by means of samples and patterns it is the rule that every licensed trader or his agent is allowed to go to any town with samples and patterns of his goods and by aid of these to conclude bargains with traders and others, the samples themselves, however, not being sold. In the rural districts, on the other hand, in accordance with the Act of 23rd May, 1873, all bargains concluded by means of samples and patterns are prohibited, except sales effected by means of samples of agricultural produce, etc. (see p. 25), or when the transaction takes place between the licensed traders themselves and only comprises goods of the kind which the purchaser also is allowed to deal in.

The Trading Act abolishes all compulsion as to market-places. On the other hand, the right is still in force of putting-up for sale, on the market-place of a town on market days, agricultural produce, especially provisions, live cattle, firewood and fodder, providing the seller has produced them himself or bought them in the rural districts.

Whereas fairs for the sale of petty wares were abolished in 1882, horse and cattle fairs can still take place where the Ministry of the Interior (Home Office) permits. At such fairs any person can, besides horses and cattle, sell agricultural produce, etc., which has been purchased in the rural districts, together with agricultural implements. And, further, any person living in a town and having a license can sell at any sale held at his place of residence, the kind of goods which he is otherwise entitled to offer for sale (§ 7 of Act of 23rd May 1873). Foreigners who have no such license must not offer goods for sale at fairs ("Danish Laws" 3—8—1).

Anyone who carries on a commercial business in contravention of the above-mentioned rules, can be condemned, through police action brought against him by the competent authority, to a fine for unlawful trading.

Om enkelte Arter af Handel gælde særlige Regler.

Dette er saaledes Tilfælde med Apotekernæringsen, hvilken kun maa udoves af dem, der dertil har erhvervet et særligt Privilegium. Apotekerne ere eneberettigede til Salg i smaat af „præparerede“ og en stor Del „urpræparerede“ Medicinalvarer. Fortegnelser over de Varer, hvis Detailsalg saaledes er forbeholdt Apotekerne, udgaar fra Tid til anden fra Justitsministeriet (se Anordn. 30 Sept. 1905 og Begg. 10 Okt. 1905). Om deres Afgiftspligt og Pligt til at fore autoriserede Regnskabsbøger se Lov Nr. 100 af 10 Apr. 1895.

Om Brændevinshandel findes en Del særlige Regler dels i Næringsloven, dels i Lov 2 Juli 1870. Ved Brændevin forstaaes i denne Sammenhæng (jvf. Næringslovens § 79) ikke blot Korn- og Kartoffelbrændevin, men alle Slags destillerede stærke Drikke saavel som al anden stærk Drik, der er tilberedt med Brændevin. Enhver, der driver Brændevinshandel, skal svare en aarlig Afgift til Stat og Kommune (varierende fra 10 til 400 Kr. efter Virksomhedens Art og Stedet derfor).

Om Handel med Gift findes særlige Regler navnlig i Frdg. 1 Apr. 1796 og Plakat 19 April 1843. Disse gaa særlig ud paa at afskære Handel en detail med giftige Stoffer udenfor Apotekerne samt at angive de Forsigtighedsforanstaltninger, der skulle iagttages ved saadanne Stoffers Opbevaring, Emballering og Udlevering. I Plakaten af 1843 findes derhos en Fortegnelse over de Stoffer, med hvilke det er tilladt at farve Kager, Deviser, Oblater, Legetøj o. lign. I Forbindelse med disse Regler maa nævnes Straffelovens § 290, der fastsætter Straf for den, der anvender giftige og andre farlige Stoffer til Varer, der er bestemte til Forhandling eller Benyttelse af andre, paa en saadan Maade, at andres Sundhed udsættes for Fare, saavel som for den, der faltholder Varer, hvortil slige Stoffer ere benyttede.

Den hele danske Giftlovgivning er i øvrigt forældet, ufuldstændig og tildels uklar, hvorfor der flere Gange har været fremsat Lovforslag til en ny Ordning paa Grundlag af en Kommissionsbetænkning af 1878. Forslagene ere dog hidtil strandede i Rigsdagen.

Lov 6 Marts 1869 forbyder at sælge fremmede Lotterisedler her i Landet<sup>1)</sup>, ligesom den forbyder alle andre end de autoriserede Kollektorer at drive Handelsforretninger med det danske Klasselotteris Sedler. Endvidere forbyder den i Danmark særskilt at afhænde Retten til for enkelte Trækninger at deltage i Gevinstfordelingen efter udenlandske Præmieobligationer, hvortil Lov 10 Apr. 1895 føjer et Forbud dels mod Kolportage i Danmark af udenlandske Præmieobligationer, dels mod overhovedet i Danmark at sælge Andele i saadanne. Et Regerings-Lovforslag om yderligere Begrænsning af Handel med Præmieobligationer er i Februar 1911 forelagt Rigsdagen.

Af de S. 23 omtalte Virksomheder, der undertiden indbefattes under Begrebet „Handel“, er Virksomheden som Leverandør fri Næring, naar Vedkommende blot bestiller Varerne hos de Personer, der ere berettigede til at forfærdige og afsætte dem; men betjener han sig af uberettigede, bliver saavel han som disse at anse for uberettiget Næringsbrug.

Kommissionshandel er tilladt Enhver med de samme Varer og i de samme Kvantiteter, som han for egen Regning maa købe og sælge, dog er det ikke tilladt at udsælge Varer i smaat for udenlandsk Regning.

Benævnelsen Agent bruges i meget forskellig Betydning. I Reglen forstaaes derved en Person, der er bemyndiget til at modtage og effektuere Bestillinger for et Handelsfirma (jvf. nærmere ndf. S. 41 ff.). Undertiden bruges Ordet dog som enslydende med „Kommissionær“. Virksomheden som Agent, der ikke omtales i Næringsloven, maa staa aaben for Enhver, saalænge den ikke antager Karakter af saadan egentlig Handel, hvortil Næringsadkomst kræves, jvf. dog om Handelsrejsende for udenlandske Firmaer ndf. S. 30, hvorhos maa fremhæves, at Administrationen antager, at saakaldte Agenter, der have fast Bopæl i en af Landets Kom-

<sup>1)</sup> Lov Nr. 109 af 6 Apr. 1906 om et dansk Kolonial-Lotteri bemyndiger dog Finansministeren til at tillade, at dettes Lodder afsættes i Danmark i det Omfang og paa den Maade, som af ham nærmere bestemmes.

For various kinds of trade (commerce) special rules operate.

They apply, for instance, to the chemist's trade, which can be carried on only by those who have obtained a special privilege to this effect. Only chemists can retail "prepared" and a good many "unprepared" drugs. Lists of the goods the retail trade of which is reserved to chemists are now and then published by the Ministry of Justice (see Ordinance of 30th Sept. 1905 and the Notice of 10th Oct. 1905). Concerning obligations to pay duty and keep books, see Act No. 100 of 10th April 1895.

With regard to the trade in spirits there are special regulations in the Trading Act and in the Act of 2nd July 1870. By "spirits" are in this connection understood to be (see the Trading Act § 79) not only spirits made from grain and potatoes, but all kinds of distilled strong drinks, as well as all other strong drinks which have been prepared by introducing brandy (spirits) into their composition. Any person carrying on a trade in spirits must pay an annual duty to the State and Municipality (which varies from 10 to 400 kroner according to the character and place of the business).

With regard to the trade in poisons there are special regulations, notably in the Ordinance of 1st April 1796 and Placard of 19th April 1843. The special object of these regulations is to prevent the retail trade in poisonous goods otherwise than in the chemists' shops, and to indicate the measures of precaution to be observed when such goods are stored, packed and delivered. In the Placard of 1843, there is also a list of the substances by means of which it is permissible to dye cakes, confectionery, wafers, toys, etc. In connection with these regulations must be mentioned the Penal Code § 290, which provides punishment for persons who make use of poisonous and other dangerous materials in the preparation of goods which are intended for trade or to be used by other persons, in such a manner that the health of other persons is endangered: the Code also determines the punishment allotted to persons who offer goods for sale in the preparation of which such materials have been used.

The whole Danish codification is, it must be owned, obsolete, incomplete and in parts obscure; for this reason: Bills have several times been brought in with a view to the formation of new regulations based on the report of a committee of 1878. These Bills, up to the present, have been wrecked in the Rigsdag.

The Act of 6th March 1869 prohibits the sale of foreign lottery tickets in this kingdom<sup>1)</sup>, and it also prohibits all other persons but the authorised lottery office keepers from dealing in tickets of the Danish lottery. It furthermore prohibits in Denmark the transfer to individuals of the official right to participate in the distribution of profits in connection with foreign lottery bonds, to which the Act of 10th April 1895 adds a prohibition against both the distribution in Denmark of foreign lottery bonds, and the selling in Denmark of part-shares of the bonds. A Bill concerning a further restriction of the trade in lottery bonds was placed by the Government before the Rigsdag in February 1911.

Amongst the activities mentioned on p. 23 which sometimes are comprised in the term "commerce" (trade), the occupation of a purveyor is a "free commerce" when the interested trader only orders the goods from such persons as are entitled to produce and sell them; but if he employs non-authorised persons in this connection, both he and they are considered as carrying on unlawful trade.

Any person may sell, as a commission agent, the same goods and the same quantities as he is allowed to purchase and sell for his own account; he is however not permitted to retail goods on behalf of a foreigner.

The term "agent" has many different meanings. As a rule it denotes a person who is authorised to receive and execute orders for a commercial firm (see further p. 41 and following). Sometimes however the word is used as a synonym for "Commission" agent. The agent's business, which is not referred to in the Trading Act, is open to any person in so far as it does not assume the character of a commerce for which a license is required (see, however, with regard to commercial travellers of foreign firms below, p. 30). It must be observed also that the Administration admits that persons designated as agents who have a fixed residence in one of the parishes

<sup>1)</sup> However, Act No. 109 of 6 April 1906, dealing with a Danish Colonial Lottery, authorises the Minister of Finance to permit its shares to be sold in Denmark, to an extent and in a manner to be hereafter determined.

muner, og hvis Forretning bestaar i at optage Ordre for udenlandske Firmaer og at besørge disse Ordre effektuerede, ere pligtige at vinde Næringsadkomst (Grossererborgerskab).

Virksomheden som Reder er fri Næring (om Betingelserne for at lade Skibet sejle under dansk Flag se Soretten). Fri Næring er ligeledes Virksomheden som Speditor eller Fragtforer i øvrigt, naar bortses fra Postvæsenets Eneret til Befordring af visse Postsager og fra Reglerne om Vognmandsnæring. Om Mæglere se ndf. S. 42. Til Virksomheden som Vexellerer kræves særligt Borgerskab, ligeledes til Virksomheden som Auktionsholder. Dermod kræves intet Borgerskab for at drive Bankierforretninger. Virksomheden som Forlægger er fri Næring, hvorimod den almindelige Boghandel kræver Borgerskab.

Virksomheden som Assurandør er fri Næring, kun er Livsforsikring ved Lov Nr. 72 af 29 Marts 1904 forbeholdt Statsanstalten for Livsforsikring og visse Selskaber (jvf. ndf. S. 53).

### Særligt om Udlændinges Adgang til at drive Handelsvirksomhed i Danmark.

Som ovf. sagt kan Ingen ned-sætte sig som Handlende her i Landet og drive Handel udenfor Grænserne af den Virksomhed, der er fri Næring (jvf. ovf.), medmindre han hos Øvrigheden har erhvervet et Borgerskab.

En af de almindelige Betingelser for at faae et saadant er imidlertid ifølge Næringsloven af 1857 § 2, (jvf. Lov 23 Maj 1873 § 1), at Vedkommende har dansk Indfødsret eller har ernæret sig ærlig 5 Aar i Danmark og i sidste Fald tillige enten har erhvervet Forsorgelsesret i den Kommune, hvor han vil ned-sætte sig, eller stiller Sikkerhed for, at han og Familie i Trangstilfælde vil blive modtaget til Forsorgelse andetsteds. Undtagelser kunne dog gores ved traktatmæssig Bestemmelse, ved kgl. Anordning eller ved Indenrigsministeriets Dispensation i det enkelte Tilfælde.

Da nu fremdeles Fattigloven (Nr. 67) af 9 April 1891 har ophævet den tidligere gældende Regel om, at en Udlænding vandt Forsorgelsesret i den danske Kommune, hvori han efter opnaaet 18 Aars Alder havde naaet fast Ophold i 5 Aar, og i Stedet derfor har bestemt (Lovens § 23), at Udlændinge, bortset fra særlige traktatmæssige Bestemmelser, kun kunne erhverve Forsorgelsesret her i Landet ved at erhverve Indfødsret, bliver Hovedreglen den, at en Udlænding — d. v. s. Enhver, der ikke enten i Kraft af Fødsel, Ægteskab eller Optagelse paa en af de aarlig udkommende Love om Indfødsrets Meddelelse har erhvervet dansk Indfødsret (jvf. Lov Nr. 59 af 23 Marts 1908 om Erhvervelse og Fortabelse af Indfødsret) — ikke kan erhverve Borgerskab i Danmark og det, hvad enten han bor i Udlandet eller i en Aarrække har boet i Danmark. Herfra gælder dog følgende Undtagelser: 1. Den Udlænding, der i 5 Aar har opholdt sig og ernæret sig ærlig i Danmark, og som kan skaffe betryggende Bevis fra sin Hjemstat for, at han og Familie i Trangstilfælde vil blive modtaget til Forsorgelse i denne, kan — selvfolgelig under Forudsætning af, at han opfylder de øvrige ovf. S. 26 angivne Betingelser — erhverve Borgerskab. Er den Paagældende tysk Undersaat, maa det anses tilstrækkeligt, at han med behørig Attest godtgør sit tyske Undersaatsforhold, da det tyske Rige ved Overenskomst, jvf. Indenrigsministeriets Bkg. af 19 Dec. 1873, har forpligtet sig til paa Forlangende at modtage sine Undersaatter, der opholde sig paa dansk Territorium uden at have opnaaet Indfødsret. — 2. Borgerskab kan fremdeles erhverves af den Udlænding, der har ernæret sig ærlig i 5 Aar i Danmark, og for hvis Vedkommende den Kommune, i hvilken han vil ned-sætte sig, frafalder Kravet paa Tilvejebringelse af det under 1. nævnte Hjemsteds-Bevis (jvf. Ind. min. Skr. Nr. 260, 1892), hvorhos det under Hensyn til Fattiglovens § 27 er antaget, at Amtet kan meddele Fritagelse for at skaffe Hjemstedsbevis. — 3. Indenrigsministeriet kan i Henhold til Næringslovens § 98 dispensere en Udlænding fra Kravet om femaarigt Ophold her i Landet. Endelig findes der — 4. traktatmæssige Bestemmelser med nedennævnte Stater, hvorefter disse Staters Undersaatter — i hvert Fald i Tilfælde af Gensidighed — have samme Ret som danske Indfødte til at drive Handel her i Landet og altsaa ogsaa til at løse Borgerskab paa Handel: a) Preussen (1818). — b) Storbritannien (1824). — c) Forenede Stater i Nord-Amerika (1826). — d) Brasilien (1828). — e) Oldenburg (1841). — f) Mecklenburg-Schwerin (1845). — g) Monaco (1845). — h) Grækenland (1846). — i) St. Domingo (1853). — k) Persien (1857). — l) Venezuela (1862). — m) Belgien (1863 og 1895). — n) Italien (1864). — o) Liberia



of the country, and whose business consists in taking and executing orders for foreign firms, are compelled to obtain a license (a license as wholesale dealers).

The business of a shipowner (managing owner) is free (with regard to the conditions on which ships are allowed to sail under the Danish flag see the Maritime Law). The businesses of forwarding agent and carrier are also free, leaving out of consideration the monopoly of the post to carry certain things connected with that service and the rules concerning cab-drivers. With regard to brokers, see below, p. 42. For the business of a money-changer a special license is necessary, as also for an auctioneer's business. But no license is required for bankers. The publishing business is free, whereas an ordinary bookseller must have a license.

Insurance business is free; life assurance, however, is practised, according to Act 72 of 29 March 1904, only by the State Institute for life assurance and certain companies (see below, p. 53).

### Special rules with regard to the rights of foreigners as traders in Denmark.

As has already been said, no person has a right to establish himself in this country as a trader and to carry on a commercial business outside the limits of those trades and businesses which are free (see above), unless he has obtained a license from the authority.

One of the ordinary conditions required for obtaining a license, however, is, according to the Trading Act of 1857 § 2 (see Act of 23rd May 1873, § 1), that the interested person has a right as a native or has led an honourable life in Denmark for five years, and in the latter case has also either acquired the right to obtain poor relief in the parish where he intends to establish himself, or can guarantee that he and his family in case of need will receive poor relief elsewhere. Exceptions may, however, be made by the provisions of treaties, by Royal Ordinance or by the permission of the Ministry of the Interior in particular cases.

Furthermore, the Poor Law (No. 67) of 9th April 1891 has abolished the regulation which was previously in force to the effect that a foreigner acquired the right to poor relief from the Danish parish in which, after having reached the age of eighteen, he had lived without interruption for five years, and in place of the said regulation has enacted (§ 23 of the Act) that foreigners, apart from special clauses in treaties, can only obtain the right to relief in this country by acquiring the rights of a native. Hence this principal rule follows, that a foreigner — i. e. any person who has not acquired, either through birth, marriage or naturalisation the native right according to one of the laws which every year are published in connection with the granting of rights as a native (see Act 59 of 23rd March 1908 concerning the acquisition and loss of the native right) — cannot obtain a license in Denmark, whether he lives abroad or for a number of years has lived in Denmark. To this rule the following exceptions must be made: 1. The foreigner who for five years has lived and honestly made a living in Denmark, and who can produce a sufficient guarantee from his native country that he and his family in case of need will receive poor relief in that country can obtain a license — of course on condition that he fulfils the other requirements mentioned on p. 26. If the person in question is a German subject it is sufficient for him to prove his German nationality by means of a certificate, as the German Empire has pledged itself by treaty (see the notification of the Ministry of the Interior of 19th Dec. 1873) to receive on demand its subjects who live on Danish territory without having acquired the native right; — 2. A license can also be obtained by the foreigner who has made an honest living in Denmark for five years and with regard to whom the parish in which he intends to establish himself does not claim the production of the certificate of nationality mentioned under 1 (see the circular of the Ministry of the Interior No. 260, 1892); in this respect it is admitted, in accordance with § 27 of the Poor Law, that the country can exempt persons from the obligation of producing certificates of nationality; — 3. The Ministry of the Interior can, according to § 98 of the Trading Act, exempt a foreigner from fulfilling the clauses relating to the five years' domicile in this country; — 4. Finally, there are treaties with the States mentioned below, according to which the subjects of these States — at any rate in cases of reciprocity — have the same right as natives to trade in this country and consequently also to obtain commercial licenses: a) Prussia (1818); — b) Great Britain (1824); — c) The United States of North America (1826); — d) Brazil (1828); — e) Oldenburg (1841); —

(1865). — p) Schweiz (1875). — q) Spanien (1879 og 1894). — r) Østrig-Ungarn (1887). — s) Portugal (1888). — t) Rusland og Finland (1895 jvf. Traktater af 1782 og 1831). — u) Japan (1895, traadt i Kraft 1899). — v) Chile (1907). — x) Mexico (1910). — y) Rumænien (1910) — og z) Serbien (1910). — Jvf. derhos med Hensyn til Nederlandene Adg. 8 December 1904.

Forudsætningen for, at der kan gives en Udlænding Borgerskab her i Riget er — ligesaavel som det er Forudsætningen med Hensyn til Indlændinge — at Vedkommende har fast Ophold her i Landet (jvf. Ind. min. Skr. Nr. 109, 1877).

Medens saaledes Adgang til at nedsætte sig som Handlende i Danmark er afskaaret for mange Udlændinge, staar det paa den anden Side enhver udenlandsk Handlende frit for at forhandle sine Varer her gennem en dansk Kommissionær, som selv har det fornødne Borgerskab, dog med den væsentlige Begrænsning, at Udsalg af Varer i smaat for udenlandsk Regning ikke er tilladt, jvf. Næringslovens § 36.

Hvad dernæst angaar fremmede Handlendes Adgang til personlig eller ved Agenter at indfinde sig i Danmark for at falbyde deres Varer, da er denne væsentlig begrænset ved en Forordning af 8 Juni 1839 ang. Fremmedes Handelsberettigelse. Denne Forordnings Hovedbestemmelser ere følgende:

§ 1. „Fremmede Handlende eller Handelskommissionærer, der indfinde sig i Kongeriget, skulle være uberettigede til at falbyde eller afhænde Varer andetsteds end i Kjøbenhavn og i Købstæderne udenfor Hovedstaden.“

[Ordet „Handlende“ forstås efter Praxis i denne Forbindelse nærmest som omfattende alle, der have Varer at sælge, altsaa bl. a. ogsaa Fabrikanter, jvf. ogsaa § 4.]

2. „De maa derhos ikke falbyde eller afhænde Varer til andre end dem, der ere berettigede til at drive Købmandshandel en gros eller en detail, saa og til Fabrikanter, Haandværkere og andre Næringsbrugere. Ligesom de dog til Købmænd kun maa afhænde saadanne Varer, hvormed enhver af disse er berettiget til at handle, saaledes maa de til Fabrikanter, Haandværkere og andre Næringsbrugere kun afhænde saadanne Varer, som enhver til sin Næringsdrift behøver. Ligeledes skulle de være uberettigede til at afhænde Varer i ringere Partier end dem, som det . . . er tilladt Grossererne at sælge.“

4. „Den fremmede Handlende eller Handelskommissionær, der vil udføre de i § 1 ommeldte Handelsforretninger her i Riget, skal for vedkommende Toldembedsmand paa det første Toldsted, hvortil han fra Udlandet ankommer, ved Attester fra Øvrigheden paa hans Hjemsted oplyse, om det er for egen eller for andres og i sidste Fald for hvilke Handlendes eller Fabrikanters Regning han agter at handle. Af Toldkammeret paa bemeldte Sted meddeles ham derefter et Adgangsbevis, der, forinden det afbenyttes, bør forevises for vedkommende Politibembedsmand, som uden Betaling har at paategne samme. Adgangsbeviset gælder i eet Aar fra Udstedelsens Dato og kan efter Aarets Udlob ombyttes med et nyt, der ligeledes gælder for eet Aar, og meddeles af Told . . . stedet der, hvor den Paagældende da opholder sig. For et saadant Adgangsbevis, og hvergang det fornyes, erlægges den Paagældende, saafremt han vil udføre Handelsforretninger alene for egen eller kun for eet Handelshus' eller een Fabrikants Regning, en Kendelse til Statskassen af 160 Kr., men rejser han for flere Handlendes eller Fabrikanters Regning, da skal for hver af disse endvidere betales 80 Kr.“

6. (Om medbragte Vareprovers Fortoldning og Provers, Provebøgers og Monsterkorts Forevisning for Toldvæsenet.)

7. „I enhver Købstad, hvor den Fremmede vil udføre Handelsforretninger, skal han forevise det meddelte Adgangsbevis saavel for Toldkammeret . . . som for vedkommende Politibembedsmand, og skal samme saavel af denne som af vedkommende Told . . . embedsmand uden Betaling viseres. Denne sidste Embedsmand har derhos i en særlig Protokol at optegne det væsentlige af Adgangsbevisernes

f) Mecklenburg-Schwerin (1845); — g) Monaco (1845); — h) Greece (1846); — i) St. Domingo (1853); — k) Persia (1857); — l) Venezuela (1862); — m) Belgium (1863 and 1895); — n) Italy (1864); — o) Liberia (1865); — p) Switzerland (1875); — q) Spain (1879 and 1894); — r) Austria-Hungary (1887); — s) Portugal (1888); — t) Russia and Finland (1895; see treaties of 1782 and 1831); — u) Japan (1895, in force since 1899); — v) Chile (1907); — x) Mexico (1910); — y) Rumania (1910) — and z) Servia (1910). — In this respect see, with regard to the Netherlands, the Ordinance of 8th December 1904.

The condition on which a foreigner can obtain a license in this kingdom — and the same condition is also imposed on natives — is that the interested person has a permanent residence in this country (see the circular of the Ministry of the Interior, No. 109, 1877).

Whereas many foreigners are precluded from the right to establish themselves as traders in Denmark, still every foreign trader is at liberty to sell his goods here by means of a Danish commission agent who has himself the required license, with the essential restriction, however, that it is not permitted to retail goods for the account of a foreigner (see the Trading Act § 36).

Furthermore, with regard to a foreigner's right to come here in person or to be represented here by agents in order to offer his goods for sale, it is essentially limited by an Ordinance of 8th June 1839 concerning a foreigner's right to trade. The principal provisions of this Ordinance are as follows:

§ 1. "Foreign traders or commission agents who come to this country shall not be entitled to offer for sale or sell goods in other places than Copenhagen and the towns outside the capital."

[The word "trader" here is understood in practice to comprise all those who have goods for sale, consequently, amongst others, manufacturers. — See also § 4.]

2. "They must furthermore not offer for sale nor sell goods to other persons than those entitled to carry on business as wholesale dealers or retailers, or to manufacturers, handicraftsmen and other tradesmen. But, in the same manner as they are only entitled to sell to merchants such goods as each of these is entitled to deal with, so they must only sell to manufacturers, handicraftsmen and other tradesmen such goods as each of these needs for his trade. They are also not entitled to sell goods in smaller quantities than those in which wholesale dealers are allowed to trade."

4. "The foreign trader or commercial traveller who wishes to carry out in this kingdom the commercial transactions mentioned in § 1, shall, at the first place after his arrival from abroad where there is a Custom House, make a declaration, authenticated by certificates from the authorities of his native country, to a Customs officer, as to whether he intends to trade for his own account or for that of other persons, and in the latter case for the account of what traders or manufacturers. At the Custom House of the place in question he will then obtain a written permission which, before being used, must be shown to the acting commissioner of police, who examines and signs it without receiving a fee. This certificate is valid for one year from the date of its issue, and can, when the year has elapsed, be exchanged for a fresh one, which also holds good for a year and is issued by the Custom House of the place where the interested person is then living. For such a certificate, and for each renewal, the interested foreigner has to pay a fee to the Exchequer which amounts to 160 kroner if he desires to do business only for his own account or only for the account of one firm or one manufacturer, and an additional fee of 80 kroner for each additional firm or manufacturer for whose account he intends to do business."

6. (Concerning the payment of customs dues on samples and patterns of goods, and the showing to the Custom House officials of such samples and patterns, the booklets containing these, and model cards.)

7. "In every town where a foreigner intends to carry out commercial transactions, he has to show, both at the Custom House . . . and to the commissioner of police of the place, the written permission obtained, and the certificate has to be examined alike by the latter and the competent Custom House official free of charge. The Custom House official has furthermore to take down the essential particulars

Indhold, hvilken Protokol ved hvert Aars Udgang bør være til de Handlendes Eftersyn."

8. „De foranførte Bestemmelser skulle ligeledes være anvendelige paa Indlændinge, forsaavidt de omrejse for at falbyde og afhænde Varer for Fremmedes Regning, og skal det fornødne Adgangsbevis af dem erliveres ved det Told . . . sted, hvor de ere bosatte."

10. „Har Nogen udført Handelsforretninger i en Købstad, forinden Adgangsbeviset efter § 4 er forevist for vedkommende Politimester, eller i det i § 7 ommeldte Tilfælde for Politiet og for Toldvæsnet, da anses han med Mulkt af 16 Kr. for Nogen sig skyldig i anden Overtrædelse af de i 1, § 2, 4 og 6 indeholdte Forskrifter, skal den Paagældende, foruden den Straf, som han for uberettiget Handel samt for Overtrædelse af Toldanordningerne maatte være ifalden, samt foruden at betale den ikke erlagte Afgift, saafremt en saadan burde være erlagt, endvidere bøde første Gang 64 Kr., anden Gang 96 Kr. og tredje Gang 128 Kr. for Nogen sig fjerde Gang skyldig i en saadan Overtrædelse, fortaber han, foruden paany at anses med Mulkt af 128 Kr., Ret til at rejse for at falbyde eller afhænde Varer i Kongeriget . . . og bliver han, saafremt han er Udlænding, ved Politiets Foranstaltning at udføre af Landet. Vareprover, der ikke paa anordnet Maade ere foreviste eller ved Afrejsen fra et Toldsted toldforsegledede, forfalde til Konfiskation.

Konfiskations-Beløbet saavelsom de ovenanførte Mulkter tilfalde . . . Fattiggasse, dog tilstaaes Angiveren paa Forlangende det Halve. I Tilfælde af Uformuenhed blive Mulkterne at afsone . . . Om den idømte Straf bliver hver Gang at gore Paategning paa det meddelte Adgangsbevis . . ."

11. „Sager angaaende Overtrædelse af denne Forordning behandles ved Politiretten."

Ifølge foreliggende Højesteretsdomme er det fastslaaet, at Adgangsbevis er nødvendigt, selv om den fremmede Handlende ved sin Tilstedeværelse her i Landet henvender sig til de autoriserede Mæglere for gennem dem at sælge sine Varer eller afslutter Salget under Medvirkning af sin herværende faste Agent, samt at Adgangsbeviset kun kan benyttes af selve den, der har løst det, ikke af en Fuldmægtig for ham, og at den citerede Forordning af 1839 finder Anvendelse uden Hensyn til, om den fremmede Handlende eller hans Agent falbyder Varer paa Grundlag af medbragte Prover eller uden saadanne.

Et Regerings-Forslag med ændrede Regler om Fremmedes Handelsberettigelse er forelagt Rigsdagen i Februar 1911.

At udenlandske Handlende, der sælge deres Varer her i Landet, maa respektere saavel den danske Varemærkelov som den særlige Lov om Straf for Brugen af urigtige Varebetegnelser og de særlige om visse Varearter givne begrænsende Forskrifter forstaar sig af sig selv.

Om Begrænsningen af Adgangen til at sælge ved Auktion eller paa Markeder saavelsom om det almindelige Forbud mod Omloben med Varer og mod Provehandel paa Landet se ovf. S. 27.

## b) Handelsregister.

Reglerne om Handelsregistrerne findes i 1ste og 2det Kapitel af Lov (Nr. 23) af 1ste Marts 1889 om Handelsregistre, Firma og Prokura (almindelig kaldet Fimaloven). Nærmere Regler om Registrets Forelse indeholdes i kgl. Adg. (Nr. 74) af 24 Maj 1889, jvf. ogsaa Just. min. Cirk. Nr. 105 og Nr. 180, 1889.

Der føres ikke her i Landet noget Centralregister, men derimod en Række lokale Handelsregistre, og Forelsen er ikke henlagt til Retterne, men derimod i Kjøbenhavn og de øvrige Købstæder til Magistraten og paa Landet til Politimesteren (§ 1).

Registret føres i hver Kreds i 3 Afdelinger, hvoraf Afdeling A omfatter Firmaer for Enkeltmænd, ansvarlige Selskaber og Kommanditselskaber, derunder Kommandit-Aktieselskaber, Afdeling B Aktieselskaber og Afdeling C andre Selskaber med begrænset Ansvar.

I hver Afdeling har hvert Firma sit særskilte Folium, og til hver Afdeling er knyttet et alfabetisk Register.

of this document in a special report, which at the end of every year shall be subject to examination by the traders."

8. "The preceding regulations shall also be applicable to natives, when as commercial travellers they offer for sale and sell goods for the account of foreigners, and the necessary written permission shall be obtained by them at the Custom House of the place of their residence."

10. If any person has carried out commercial transactions in a town before the written permission according to § 4 has been shown to the acting commissioner of police, or, in the case mentioned in § 7, to the police and at the Custom House, he has to pay a fine of sixteen kroner. If any person further infringes the regulations contained in §§ 1, 2, 4 and 6, the person in question, besides the penalty incurred through unlawful commerce and infringement of the Custom House regulations, and besides the payment of the prescribed fee in so far as such fee ought to have been paid previously, shall furthermore be liable to be fined the first time 64 kr., the second time 96 kr. and the third time 128 kr. If a person is found guilty a fourth time of similar infringement, he loses, besides having again to pay a fine of 128 kr., his right as a commercial traveller to offer for sale or sell goods in the kingdom . . . and, if he is a foreigner, he will be expelled from the country by the police. Samples and patterns of goods which have not been shown in the prescribed manner, or which when the owner of them left the Custom House were sealed up there, are liable to confiscation.

The amount realised by the sale of the confiscated goods, as well as the above-mentioned fines, are handed over to the guardians of the poor of . . ., half of it, however, will be given, on demand, to the person giving information of the infringement. In case of insolvency the offending person will have to undergo imprisonment . . . The sentence imposed each time must be mentioned on the permission certificate . . ."

11. "Proceedings concerning the infringement of this regulation are dealt with by the police court."

According to the decisions of the Supreme Court, it has been held that a permission certificate is required even if the foreign trader during his stay in this country applies to authorised brokers in order to sell his goods through them, or if he concludes a bargain by means of one of the regular agents residing in this country, and it has been further decreed that the permission certificate is nowise transferable, and that the Ordinance of 1839 is applicable whether or not the foreign trader or his agent offers goods for sale by means of samples and patterns being shown.

A Government project with altered regulations concerning the rights of foreigners to trade was submitted to the Rigsdag in February 1911.

It is of course understood that foreign traders who sell their goods in this country are subject alike to the observance of the Danish Trade Marks Act and the special Act concerning punishment for the use of false descriptions of goods, and the special restrictions with regard to certain kinds of goods.

Concerning the restriction of the permission to sell by auction at fairs, and the general prohibition as to hawking goods and doing business by means of samples and patterns in the rural districts, see above, p. 27.

### **b) Commercial Registers.**

The regulations for commercial registers are to be found in the first and second chapters of the Act (No. 23) of 1st March 1889 concerning commercial registers, firms and proxies (generally called the Firms Act). Further regulations as to how the register should be kept are contained in the Royal Ordinance (No. 74) of 24th May 1889; see also the circulars of the Ministry of Justice No. 105 and No. 180, 1889.

No central register is maintained in this country, but there are a series of local commercial registers, which are not kept by the tribunals, but by the magistrates in Copenhagen and the other towns and by the commissioners of police in the rural districts (§ 1).

The register of every district contains three sections, of which section A comprises firms consisting of individuals, limited and unlimited partnerships, and amongst the former limited partnerships with share capital: section B comprises joint stock companies: section C comprises other associations having limited liability.

In each section every firm has its separate folio, and to each section is attached an index.

Som almindelig Regel maa opstilles, at det ikke betragtes som Registreringsmyndighedens Opgave at kontrollere de gjorte Anmeldelsers Rigtighed (men vel, at der foreligger Overensstemmelse mellem de forskellige Dele, der tilstilles Registreringsmyndigheden f. Ex. Anmeldelse og Vedtægter). Dog vil Registreringsmyndigheden, naar det foreliggende gør det tvivlsomt, om selve Firmanavnet er lovmæssig dannet, forlange dette nærmere konstateret, hvorhos det i al Almindelighed maa anses givet, at, hvor der forlanges registreret noget, som — Registreringsmyndigheden bekendt — er bevisligt urigtigt, maa det være denne Myndigheds Ret og Pligt at nægte Registrering. Det er formentlig en Anvendelse af dette sidste Principle, naar der i Praxis ikke sjældent finder Afvisninger Sted af Anmeldelser fra „Aktieselskaber“, der efter Indholdet af Vedtægterne ojsynlig kun ere Skalkeskjul for en enkelt Persons Forsøg paa at gore sig uansvarlig.

„Anmeldelse til Handelsregistret skal ske skriftlig<sup>1)</sup> og være ledsaget af den anordnede Betaling<sup>2)</sup> for Registrering og Kundgørelse.

Forsaavidt Anmelderne ikke give personligt Møde for Registreringsmyndigheden, skulle deres Underskrifter være notarialiter bekræftede“ (§ 2).

„Fyldestgør en Anmeldelse ikke Lovens Forskrifter, eller indeholder den Noget, hvis Indførelse i Registret ikke er lovlijemlet, skal Anmeldelsen afvises.

Er Adresse opgivet, skal Registreringsmyndigheden snarest muligt meddele Anmelderen Underretning om Afvisningen og Grunden til samme.

Finder Anmelderen Afvisningen ubeføjet, kan han rette sin Anke derover til Justitsministeren, som da afgør Sagen, uden at Vedkommendes Adgang til at faae Spørgsmaalet afgjort ved Rettergang derved indskrænkes“ (§ 3).

Registreringsmyndigheden skal uopholdelig paa Anmelderens Bekostning lade enhver i Registret indført Anmeldelse indrykke i „Statstidende“. — Ved offentlig Foranstaltning udgives en for hele Riget fælles Samling af de kundgjorte Anmeldelser med Aarsregister (§ 4 jvf. Lov Nr. 10, 1903).

„Antager Nogen, at en i Handelsregistret optaget Anmeldelse er ham til Skade, hører Spørgsmaalet om Anmeldelsens Udsettelse under Domstolenes Afgørelse. Saadanne Sager behandles som Handelssager“ (§ 6).

Det, som overensstemmende med Fimaloven er blevet registreret og kundgjort i Statstidende, skal anses for at være kommet til Tredjemands Kundskab, saafremt Omstændighederne ikke give Grund til at antage, at han hverken har eller burde have været vidende derom.

Saalænge saadan Kundgørelse ikke har fundet Sted, kan det Forhold, der er eller skulde have været anmeldt, ikke gøres gældende mod Tredjemand, medmindre det bevises, at han har haft Kundskab derom (§ 7).

Medens Anmeldelse af Enkeltmands Firma er en frivillig Sag, skulle alle andre Firmaer, der drive Haandværks- eller Fabrikvirksomhed, eller handelsmæssig Virksomhed, som ligger indenfor de S. 35—36 angivne Grænser, saavel som ethvert Livsforsikringselskab (jvf. Lov Nr. 72, 1904) anmeldes, forinden Forretningen træder i Virksomhed. Anmeldelsen gøres til Handelsregistret i den Kreds, hvor Forretningskontoret findes. Naar der oprettes en under særskilt Bestyrelse staaende selvstændig Forretningsafdeling (Filial), skal Anmeldelse ligeledes gøres til Registreringsmyndigheden i Hovedkontorets Kreds, der saa, hvis Filialen ligger i en anden Kreds, snarest muligt efter Anmeldelsens Registrering og Bekendtgørelse skal oversende den til Optagelse i Handelsregistret paa det Sted, hvor Filialen er beliggende. [Den, der saaledes har Kontor paa flere Steder, kan i øvrigt ogsaa, om han foretrækker det, anmelde Firma for hver især af disse Forretninger som for en selvstændig Forretning.] Udenlandsk Forretnings Filial betragtes altid som en selvstændig Forretning og skal anmeldes af sin Bestyrelse (§ 16, 1ste St.).

<sup>1)</sup> Blanketter hertil udleveres i Kjøbenhavn af Magistraten og andetsteds af Politimesteren.

— <sup>2)</sup> Betalingen for Anmeldelser (Lovens § 36) varierer fra 2 til 8 Kr. foruden Bekendtgørelsesudgifterne. I nogle Tilfælde modtages dog Anmeldelsen gratis.

It is generally conceded that it is not the business of the registration authorities to verify the correctness of every declaration made to them, but on the other hand they are supposed to see that there is no disparity between the various parts of the declaration, as for example between the declaration and the articles of association (statutes). The registration authorities will, however, when it is doubtful whether the name of the firm in question is framed according to law, require that this point be further examined, and it is generally considered as the right and duty of the registration authorities to refuse registration in cases where they know for certain that some detail is not in accordance with facts. It is presumably through the application of this last principle that in practice registration is not infrequently refused to "Joint Stock Companies", which, to judge from their articles of association (statutes), are evidently only a cloak to the designs of a single individual who desires to shirk liability.

"The declaration in the commercial register shall be made in writing<sup>1)</sup> and be accompanied by the stipulated fee<sup>2)</sup> for registration and publication.

When the persons making the declarations do not themselves appear before the registration authorities their signatures shall be confirmed by a notary (§ 2)."

"If a declaration does not satisfy the requirements of the law, or contains something which according to the law cannot be entered in the register, it shall be rejected.

If the interested person has given his address, the registration authorities shall, as soon as possible, inform him of the rejection and the reasons for it.

If the interested person considers the rejection unjustified, he can lodge a complaint with the Minister of Justice, who then decides the matter, but this decision does not prejudice the party's right to refer the case to a tribunal for judgment (§ 3)."

The registration authorities shall, without delay, and at the expense of the party, publish in the "Official Gazette" every declaration which has been made in the register. — The authorities publish a general collection for the whole Kingdom of the declarations registered, with an annual index appended (§ 4, see Act No. 10, 1903).

"If any person considers a declaration made in the commercial register as being detrimental to him, the tribunals are competent to decide as to whether the declaration shall be annulled or not. Such matters shall be classed as commercial affairs" (§ 6).

A declaration which according to the Firms Act has been registered and published in the "Official Gazette", shall be considered as having come within the knowledge of third persons, unless the circumstances of the case give reason to believe that they have neither had, nor been able to have, knowledge of it.

So long as such publication has not taken place, no liability as to third persons can arise out of what is or ought to have been declared to the registration authorities, unless it is proved that they have knowledge of it (§ 7).

Whereas the registration of the firm of a single individual is a voluntary matter, all other firms of handicraftsmen, manufacturers or tradesmen coming within the categories indicated on pages 35—36, as well as all life assurance companies (see Act No. 72, 1904) must be registered before they commence operations. The registration is made in the district where the firm has its office. When an independent branch (affiliated) with a special management is established, the registration must also in this case be made in the district of the chief office, which then, if the branch is situate in another district, as soon as possible after the registration and publication of the declaration, must transmit it to the commercial register of the place where the branch is situate. [A firm having offices at different places can, it should be observed, if it prefers to do so, also register each of them as if they were independent businesses.] The branch of a foreign business is always considered as being an independent business, and shall be registered by its manager (§ 16, 1st par).

<sup>1)</sup> The forms used for this purpose are in Copenhagen delivered by the magistrate and in other places by the commissioner of police. — <sup>2)</sup> The registration fee (§ 36 of the Act) varies from 2 to 8 kr. exclusive of expenses of publication. In some cases, however, the registration is free.

„Forsaavidt angaar Aktieselskaber og andre Selskaber med begrænset Ansvar, paahviler Anmeldelsespligten Selskabets Bestyrelse; for andre Selskabers Vedkommende paahviler den samtlige fuldt ansvarlige Medlemmer.

Anmeldelsen skal være underskrevet af samtlige anmeldelsespligtige Personer“ (§ 16, 2det og 3dje St.).

„Samtidig med, at et Firma anmeldes, skulle de, der ere berettigede til at tegne Firmaet, egenhændig indskrive Firmategningen i Handelsregistret eller i et særligt Tillæg til dette, forsaavidt saadan Firmategning ikke er meddelt paa Anmeldelsen. Paa samme Maade forholdes, naar der sker Anmeldelse om, at Nogen faar Ret til at tegne et tidligere anmeldt Firma“ (§ 22.)

Hvad Anmeldelsens Indhold angaar, maa for det første de ndf. S. 36 angivne Regler for Firmanavnes Dannelse iagttages, idet Anmeldelsen ellers vil blive afvist.

I øvrigt gælde følgende Forskrifter:

§ 17. „Anmeldelse af Enkeltmands Firma, naar saadan finder Sted, skal foruden Firmaet angive 1. hans fulde Navn og Bopæl, — 2. Forretningens almindelige Beskaffenhed, — 3. den Kommune, hvor Forretningskontoret (Filialen) findes.“

[Forretningens „almindelige Beskaffenhed“ angives for den egentlige Handels Vedkommende ved Benævnelsen „Handel“ uden nærmere Tilføjelse. Ved Handlens Bi-Erhverv maa Arten nævnes f. Ex. Spedition.]

18. „Et ansvarligt Selskabs Anmeldelse skal foruden Firmaet angive: 1. samtlige Medlemmers fulde Navn og Bopæl, — 2. Forretningens almindelige Beskaffenhed [jvf. ovf.], — 3. den Kommune, hvor Forretningskontoret (Filialen) findes, — og, saafremt ikke hvert enkelt Medlem har Ret til at tegne Firmaet, — 4. hvem saadan Ret tilkommer, samt om denne Ret kun kan udøves af flere i Forening.“

[De anmeldte Bestemmelser om Signaturen maa være ensartede for alle de under Forretningen hørende Anliggender. Det kan altsaa ikke anmeldes, at Een skal underskrive i een Slags Forretninger, en Anden i en anden, eller at alle hver for sig skal have Signaturen, men dog kun i Forening kunne paatage sig Vexelforpligtelser el. a. lign. Disse Bemærkninger finde tilsvarende Anvendelse paa de nedennævnte Selskabers Bestyrelse. Da der overhovedet ikke kan optages nogen anden Begrænsning end den under 4 nævnte (Kollektiv-Signatur i alle Anliggender), vil dermed ogsaa enhver Begrænsning i det fulde solidariske Ansvar være udelukket.]

Et Kommanditselskabs Anmeldelse skal indeholde det samme som et ansvarligt Selskabs, „dog at den tillige skal indeholde en udtrykkelig Angivelse af denne Selskabets Egenskab, og, hvis det er et almindeligt Kommanditselskab, Oplysning om hver enkelt Kommanditists Navn og Indskud, eller, hvis det er et Kommanditaktieselskab, en med Selskabets Vedtægter bilagt Meddelelse om de i § 19 under 1 og 4 til 7 omhandlede Punkter. Derhos skal som Bilag vedlægges en Erklæring fra Kommanditisterne, eller, forsaavidt tilstrækkelig Legitimation foreligger, fra deres Tilsynsraad om, at Anmeldelsen sker med deres Samtykke. Kommanditisternes Navne og Beløbet af deres Indskud bekendtgøres ikke.

19. „Et Aktieselskabs Anmeldelse skal foruden Firmaet angive 1. Vedtægternes Dato, — 2. Forretningens Art, — 3. den Kommune, hvor Forretningskontoret (Filialen) findes, — 4. den tegnede Aktiekapitals Størrelse og Fordeling i Aktier, — 5. om Aktierne ere ndstede paa Navn eller til Ihændehaver, — 6. om Aktierne ere fuldt indbetalte, og, i modsat Fald, naar Indbetaling kan kræves, — 7. om Bekendtgørelser til Medlemmerne skulle ske i offentlige Tidender, og i saa Fald i hvilke, — 8. Bestyrelsesmedlemmernes fulde Navne og Bopæl, — 9. hvem af disse der er berettiget til at tegne Selskabets Firma.

Med Anmeldelsen skal som Bilag følge Selskabets Vedtægter samt behørig Legitimation for Bestyrerne.“

20. „Hvad der i § 19 er fastsat om Anmeldelse af et Aktieselskabs Firma, finder tilsvarende Anvendelse paa andre Selskaber med begrænset Ansvar,



"In so far as joint stock companies and other associations with limited liability are concerned, the duty of registration is incumbent on the managing directors of the company; in the case of other associations it is incumbent on all fully responsible members.

The declaration shall be signed by all those persons who are liable to be called upon to register." (§ 16, 2nd and 3rd pars).

"Simultaneously with the registration of a firm all parties having the right of signature shall in person sign for the firm the commercial register or a special supplement of it, provided such signature has not been given in the document of declaration. The proceedings are the same when a declaration is made to the effect that a person has obtained the right to sign for a previously registered firm" (§ 22).

With regard to the contents of the declaration, in the first instance the regulations mentioned below p. 36 as to the formation of the name of the firm must be observed, as otherwise the declaration will be rejected.

Furthermore, the following rules are applicable:

§ 17. "The declaration of the firm of an individual, when made, shall indicate besides the name of the firm: 1. The party's full name and residence; — 2. The general character of the business; — 3. The parish in which the office of the business or the branch is situate."

[The "general character" of the business is indicated, in so far as commerce properly so-called is concerned, by the designation of "commerce", without further addition. In the case of a trade subsidiary to commerce, the special kind must be mentioned, e. g. forwarding agency.]

18. "The declaration of an unlimited partnership shall, in addition to the firm, indicate: 1. The full names and residences of all its members; — 2. The general character of the business (see above); — 3. The parish in which the business office (or the branch) is situate — and, in the case of each individual member not having the right to sign for the firm; — 4. To whom such right has been given, and whether this right can in practice be used by several persons jointly."

[The above mentioned rules with regard to the signature must be uniform for all affairs connected with the business. Consequently it cannot be declared that one person can sign where one kind of business is concerned, another person where another kind is concerned, or that all members separately have a right to sign, but that liabilities in connection with bills of exchange can only be incurred when their joint signature is affixed, or other similar clauses. These remarks may similarly be applied to the directors of the associations mentioned below. As in general no other restriction is imposed than that mentioned under 4 (joint signature in all matters), every restriction of the full unlimited liability must consequently also be excluded.]

The declaration of a limited partnership shall contain the same particulars as that of an unlimited partnership, "with the addition, however, of an express indication of the nature of the partnership, and if it is an ordinary limited partnership, information with regard to each partner's name and the amount of capital invested by him, or, if it is a limited partnership with share capital, a statement with regard to the points mentioned in § 19 under 1 and 4 to 7, and the articles (statutes) of the association. Furthermore an attestation from the partners, or from their board of directors, if this body has the necessary powers, to the effect that the registration takes place with their consent shall follow as a supplement. The names of the partners and the amounts invested by them are not published."

19. "The declaration of a joint stock company shall in addition to the firm contain: 1. The date of its articles of association (statutes); — 2. The character of the business; — 3. The parish in which the office of the business (the branch) is situate; — 4. The amount of the subscribed share capital and its distribution in shares; — 5. Whether the shares have been issued nominatively or to bearer; — 6. Whether the shares have been fully paid up, and in the contrary case, when payment can be called for; — 7. Whether notifications to the members are to be published in the press, and in this case, in what papers; — 8. Full names and addresses of the managing directors; — 9. Which of the latter have the right to sign for the company.

The statutes of the company and evidence in justification of the directors' powers shall be appended as supplements to the declaration."

20. "The stipulations of § 19 with regard to the declaration of the firm of a joint stock company are in corresponding manner applicable to other associations with

[hertil henregnes ifølge § 33c ogsaa ethvert Selskab med vexlende Medlemsantal eller vexlende Kapital, selv om dets Medlemmer ere fuldt ansvarlige], saaledes at der i Anmeldelsen skal meddeles Oplysning om de Bestemmelser, som maatte være vedtagne angaaende Medlemmernes Ansvar ligeoverfor Tredjemand.“

Ifølge § 21 skal enhver Forandring i de engang anmeldte Forhold (altsaa f. Ex. Forandring af Firmanavn, Medlemmers Udtræden eller Indtræden, Forandring i Retten til Underskrift, Forretningsophævelse o. s. v.) altid snarest muligt anmeldes under lagttagelse af Forskrifterne om Fremgangsmaaden ved Anmeldelse af Firma; dog behøver Forandring af Bopæl ikke at anmeldes. Foretager et Aktieselskab eller andet Selskab med begrænset Ansvar Ændringer i saadanne Punkter af dets Vedtægter, som ikke skulle være optagne i den oprindelige Anmeldelse, skal kun Dagen for den besluttede Forandring anmeldes og et Exemplar af Beslutningen vedlægges.

„Naar Forretningen ophører, paahviler Anmeldelsespligten Enhver, som paa den Tid var Indehaver af eller ansvarlig Deltager i samme eller, forsaavidt angaar Aktieselskab eller andet Selskab med begrænset Ansvar, Medlem af dets Bestyrelse. Doer Indehaveren af en Forretning, paahviler Anmeldelsespligten hans Bo; ophører et ansvarligt Selskab paa Grund af et Medlems Død, paahviler Anmeldelsespligten saavel de andre ansvarlige Medlemmer som den Afdodes Bo. Naar der er Spørgsmaal om andre Forandringer end Forretningens Ophor, paahviler Anmeldelsespligten Enhver, som efter Forandringen er Indehaver af eller ansvarlig Deltager i Forretningen eller, forsaavidt angaar Aktieselskab eller andet Selskab med begrænset Ansvar, Medlem af dets Bestyrelse.

Flyttes Forretningen til en anden Kommune, eller forandres selve Firmaet, skal tillige fuldstændig Firmaanmeldelse gores.

Er det ved Dom blevet afgjort, at en Anmeldelse ikke burde have været optagen i Handelsregistret, eller at et Forhold, hvorom Tilførsel er gjort i dette, er forandret eller ophørt, skal der herom paa Forlangende af nogen af Parterne i Registret optages en Bemærkning, der bliver at kundgøre overensstemmende med § 4.

I Tilfælde af Konkurs skal Skifteretten foranledige tilført Handelsregistret en Bemærkning om Konkursbehandlingens Aabning og Ophor.“

Endelig maa mærkes, at, hvor Firmanavn kan bibeholdes uanset Dødsfald, Ægteskab, Medlemmers Ind- og Udtræden eller Overdragelse (jvf. ndf. S. 37) skal den indtraadte Forandring altid anmeldes, selv om der ikke har været Tale om Anmeldelse fra først af, altsaa selv om det overførte Firma er Enkeltmands. Ligeledes skal Anmeldelse gores i det i § 15 omtalte Tilfælde (jvf. ndf. S. 37), altsaa ogsaa naar Enkeltmands Firma stilles under Bestyrelse af Tillidsmænd med Ret for dem til at tegne Firmaet, eller naar en Forretning efter Indehaverens Død midlertidig fortsættes af Arvingerne.

Den, som undlader at gøre en foreskreven Anmeldelse, eller som, naar hans Anmeldelse er blevet afvist eller udslettet af Registret, undlader at gøre ny Anmeldelse, straffes ifølge § 23, jvf. § 24, under en offentlig Politisag med Bøder fra 5—500 Kr.

Skøndt der vel i og for sig kunde være Spørgsmaal om at anvende denne Bode-Regel ogsaa overfor den, der gør en pligtig Anmeldelse af urigtigt Indhold f. Ex. — hvad der sikkert i Praxis ikke sjældent forekommer — angiver en Aktiekapital større, end den i Virkeligheden er, eller angiver, at den er fuldt indbetalt, skøndt den i hvert Fald kun i meget uegentlig Forstand kan siges at være dette, ses der dog ikke i Domssamlingerne at foreligge en eneste Dom, der har gjort en saadan Anvendelse af § 23. Ved Fimalovens Udarbejdelse blev det forudsat, at den vilde blive suppleret med en Lov om Aktieselskaber. En saadan er imidlertid for Danmarks Vedkommende ikke endnu kommet. Man nøjes altsaa for Tiden her i Landet paa dette Omraade med den ufuldkomne Beskyttelse, der ligger i Straffelovens almindelige Bedrageriregler.

Ved Siden af den ovenomtalte Anmeldelsespligt, hjemler Loven ogsaa en Anmeldelsesret. Dels er, som omtalt, Anmeldelse af Enkeltmands Firma en frivillig Sag, dels bestemmer § 35, at de Handelsberettigede og de Aktie- og Kommanditaktie-Selskaber, der ikke ere anmeldelsespligtige, kunne foretage Anmeldelse til Handelsregistret og da i det Hele blive underkastede Fimalovens

limited liability [to this category belong also according to § 33 c every association whose members and capital vary, even though its members may be fully responsible], in so far as the declaration shall contain information as to the rules adopted concerning the liability of the members in regard to third parties."

According to § 21 every alteration of arrangements already made (as, for example, alteration of the name of the firm, the entry or withdrawal of members, alterations as to the right of signature, the dissolution of the business etc.) shall be declared as soon as possible, due notice being taken of the rules to be followed when the declaration of a firm is made; the declaration of a change of address is, however, not necessary. If a joint stock company or other limited association undertakes to alter such points in its statutes as have not been mentioned in the original declaration, only the date of the alteration is to be declared, a copy of the resolution to this effect to follow the statement.

"If the business is dissolved the duty of declaring it so is incumbent on the person who at the time of its dissolution was the proprietor or responsible partner of the same, or, when a joint stock company or other association is concerned, was a member of its board of directors. If the proprietor of a business dies, the duty of declaration is incumbent on his estate; if an unlimited partnership is dissolved owing to the death of one of its members, the duty of declaration is alike incumbent on the responsible members and the deceased's estate. When other alterations than the dissolution of the business are concerned, the duty of declaration is incumbent on all those who, after the alteration has taken place, manage the business or are responsible partners or, when it is a question of a joint stock company or other limited association, on the members of its board of directors.

If the business is removed to another parish, or if the firm itself is altered, a full declaration of the firm shall be made at the same time.

If judgment has been given that a declaration ought not to have been altered in the commercial register, or that a circumstance entered in the register has been modified or ceased to exist, this shall at the request of either of the parties be taken down in the register and published according to § 4.

In the case of bankruptcy the Bankruptcy Court shall order the insertion in the commercial register of a memorandum in reference to the institution and conclusion of the bankruptcy proceedings."

Finally it must be observed that, where the name of a firm can be maintained in spite of death, marriage, increase or decrease of membership or transfer (see below p. 37), the alteration which has taken place shall always be declared even if at first there was no question as to declaration, consequently even when such firm is that of a single person. Declaration is also to be made in the case mentioned in § 15 (see below p. 37), and so also when the firm of a single person is placed under the control of trustees having the right to sign for the firm, or when a business after the death of its proprietor is temporarily continued by his heirs.

Whoever omits to make a prescribed declaration, or, when his declaration has been rejected or crossed off the register, omits to make a new declaration, is punished according to § 23, see § 24, by means of a proceeding brought in the public police court, with a fine of 5—500 kr.

One might perhaps reasonably apply this rule concerning fines also to the person who makes inexact statements in the prescribed declaration, for example — as certainly in practice not infrequently happens — the declaration of a larger share capital than that which actually exists, or the statement that it has been fully paid up, although this, however, can be said to be the case in only a very figurative sense. In spite of this there does not in the reports of the law courts seem to be a single judgment which has applied § 23 in such a manner. The Firms Act was drawn up on the assumption that it should be supplemented by an Act concerning joint stock companies. Such an Act has however, not yet been enacted in Denmark. In this country one must therefore for the present be content with the incomplete protection involved in the general provisions regarding fraud in the Penal Code.

Besides the above mentioned duty to register, the law also recognises the right to register. Such for instance, as has been said, is the registration of a single individual's firm, which is a voluntary matter, and again § 35 provides that those who have a right to trade and those joint stock companies and limited partnerships which are not obliged to declare, can, if they choose, make a declaration in the commercial

Bestemmelser. Hvad der i denne Forbindelse skal forstaaes ved „Handelsberettigede“, er i øvrigt ret uklart.

Handelsregistret modtager ikke Anmeldelse om andre Forhold end de i det foregaaende nævnte samt om Prokura (jvf. S. 40), og, skulde andet ved en Fejltagelse dog være optaget deri, er dette uden Virkning. Et udenlandsk Firma, der ikke har noget selvstændigt Forretningskontor heri Landet, vil saaledes ikke kunne optages i det danske Handelsregister, jvf. Justitsministeriets Skrivelse Nr. 247 1903.

Enhver er berettiget til at faae Udskrift af Registret eller mundtlige Oplysninger om dets Indhold. For Udskrift af alt, hvad der vedrører et enkelt Firma, [derunder Vedtægter og øvrige Bilag], betales 4 Kr., for Udskrift af en enkelt Anmeldelse 2 Kr., for mundtlig Oplysning om et enkelt Firma 80 Øre. For Notarialforretninger i Henhold til Fimaloven betales 2 Kr. (§ 36).

### c) Firma.

Reglerne om Firma findes i 2det Kapitel af Lov (Nr. 23) af 1 Marts 1889 om Handelsregistre, Firma og Prokura (almindelig kaldet Fimaloven).

Denne Lov gennemfører vel i Hovedsagen Principet om Firmaets Sandhed, men indrommer dog visse Lempelser deri, idet den nemlig, foruden under visse nærmere Betingelser at tillade Firmaets Bibeholdelse af Arvinger m. m., tillige tilsteder, at Firmaet kan overdrages sammen med Forretningen, men dog kun saaledes, at der til Firmabetegnelsen føjes et Tillæg, der antyder Efterfølgerforholdet. I alle Tilfælde, hvor et Firma bibeholdes til Trods for, at de til Grund liggende Forhold forandres, er derhos Anmeldelse til Handelsregistret ubetinget foreskrevet.

Udkastet til Loven, der er udarbejdet af en fælles dansk-norsk-svensk Kommission, blev i den danske Rigsdag underkastet en Del Ændringer, deriblandt den, at man gjorde Anmeldelse til Handelsregistret af Enkeltmands Firma til en frivillig Sag. Disse Ændringer have paa flere Punkter bragt nogen Forstyrrelse i Lovens System og nogen Uklarhed.

Loven forstaaer ved „Firma“ „det Navn, hvorunder Forretningen drives og Underskrift med Hensyn til samme meddeles“, hvilket vistnok maa forstaaes saaledes, at en Forretning maa betragtes som ført under et vist Firmanavn, naar blot saadan Benævnelse enten findes paa Forretningens Skilte<sup>1)</sup>, Reklamer, Emballage, Fakturaer eller lign. eller benyttes ved Underskrift paa Forretningens Vegne.

Loven siger ikke udtrykkelig, at en Forretningsdrivende kan stævne og stævnes under Benyttelse af Firmanavnet, men at han kan dette, betragtes i dansk, processuel Praxis som selvfølgeligt.

Lovens § 34 hjemler derhos udtrykkelig, at Sager, hvorunder Indehaveren af et anmeldt Firma søges i noget Forretningen vedrørende Anliggende, kunne indbringes for Retten paa det Sted, hvor Forretningskontoret ifølge Anmeldelsen findes, altsaa selv om Indehaveren har privat Bopæl andetsteds.

Lovens nærmere Regler om Firmanavn ere ifølge § 8 anvendelige paa „Enhver, der driver Handel, Haandværksnæring eller Fabriksvirksomhed“; hvorved maa mærkes at, „Som Handlende eller lige med Handlende“ regner Loven (jvf. dens § 35) følgende: a) Enhver, Enkeltmand eller Selskab, som driver Handel i Henhold til Borgerskab eller Næringsbevis paa Handel, Brændevinshandel undtagen — derunder ogsaa Forbrugs- og Produktionsforeninger o. desl., forsaavidt deres Virksomhed maa betragtes som Næringsdrift — eller som søger stadigt Erhverv ved at drive Vexeller- eller Bankforretninger, Spedition, Assuranceforretninger mod Premie eller Assuranceagentur<sup>2)</sup> samt — b) Sparekasser.

Undtagne ere: a) Selskaber, hvis Statuter ere fastsatte ved Lov, og — b) Høkere, samt de, der drive saadan Handel, som omhandles i Lov om Haand

<sup>1)</sup> Medmindre da Betegnelsen udelukkende maa betragtes som „Etablissementsnavn“ eller som en almindelig Betegnelse af Forretningens Art. — <sup>2)</sup> Lov Nr. 72, 1904, om Livsforsikringsvirksomhed giver bl. a. visse særlige Regler m. II. t. Livsforsikringsselskabers Firmanavn og Anmeldelsespligt.

register and then must submit themselves entirely to the provisions of the Firms Act. What in this connection is to be understood by "those who have a right to trade" is somewhat obscure.

The commercial register does not accept declarations in reference to any other circumstances than those previously mentioned and those concerning proxies (see p. 40), and if through error a declaration should contain anything else, this is not legally binding. A foreign firm having no independent business office in this country can consequently not be entered in the Danish commercial register; see circular No. 247, 1903, of the Ministry of Justice.

All persons are entitled to a copy of the register, or to information given verbally concerning its contents. For a copy of all the particulars which concern a single firm [including regulations (statutes) and other accessories], the charge is 4 kr., for the copy of a simple declaration 2 kr., for information about a single firm given orally 80 Ore. For the services of a notary according to the Firms Act, the charge is 2 kr. (§ 36).

### c) Firms.

The rules as to firms are contained in the 2nd chapter of the Act (No. 23) of 1st March 1889 concerning commercial registers, firms and proxies (generally called the Firms Act).

The general provisions of this Act ensure that the name of a firm shall be in agreement with facts, but at the same time it admits of certain exceptions. Besides, in certain definite circumstances, permitting heirs to continue the firm etc., it also allows the transference of the firm together with the business; in this case, however, there must be appended after the designation of the firm the circumstance of the transfer. In all cases where a firm has been maintained in spite of the fundamental alterations which have taken place in the business itself, it is unconditionally required that a declaration shall be made in the commercial register.

The project of the Act, which was drafted by a joint Danish-Norwegian-Swedish committee, underwent some modifications in the Danish Rigsdag, notably that making the declaration in the commercial register of the firm of a single individual a voluntary matter. These alterations have in several points somewhat confused the system of the Act and to some extent rendered it obscure.

By "Firm" the Act means "the name under which the business is carried on, and under which the signature designating the same is given". This, it must be assumed, is to be understood to mean that a business must be considered as carried on under a certain firm name when only this name is indicated on its shop signs<sup>1)</sup>, in its advertisements, on its parcels and in its invoices etc., or is used as the signature for the business.

The Act does not expressly say that the manager of a business can summon and be summoned in the name of his firm, but this contingency is in Danish procedure considered as a matter of course.

§ 34 of the Act expressly provides that actions brought against the owner of a registered firm in connection with the business, can be taken in the tribunal of the place where the business, in accordance with the declaration, is situate, even when the owner has his private residence elsewhere.

The further rules of the Act as to the names of firms are according to § 8 applicable to "Whosoever carries on commerce, the trade of a handicraftsman, or has a factory"; in this connection it must be observed that "as traders or the equivalent of traders" the Act considers (see § 35): a) Whosoever, single individual or association, carries on commerce and to this effect has a license or a trading certificate entitling him to carry on commerce, the trade in spirits excepted — including also co-operative selling and producing societies etc., in so far as their business may be considered as trade — or whosoever makes a regular profession by operations in money-changing, banking, forwarding agencies, insurances against premiums or insurance agencies<sup>2)</sup> and — b) savings banks.

Exceptions are: a) Societies whose statutes have been fixed by law, and b) Small provision dealers and persons who carry on such commerce as is dealt with in the

<sup>1)</sup> Unless the designation must be exclusively considered as the "name of the establishment" or as a general designation for the kind of the business. — <sup>2)</sup> Act No. 72, 1904, concerning the life assurance business, provides special rules with regard to names of firms and the obligation to register life assurance companies.

værks- og Fabrikdrift m. m. af 29 December 1857, §§ 49, 50, 52 og 57 [d. v. s. Marskandiserhandel, Handel med gamle Bøger og gammelt Jærn, ringe Handel].

„Handelsberettigede, som ikke ere anmeldelsespligtige, Aktieselskaber og Kommanditaktieselskaber, forsaavidt de ikke ere anmeldelsespligtige . . . kunne dog foretage Anmeldelse til Handelsregistret og blive da i det Hele underkastede denne Lovs Bestemmelser.“

Det ligger i anførte Regel, at udenfor Loven falde — bortset fra frivillig Anmeldelse — de, der drive Handel med Ting, der ere Genstand for fri Næring (se ovf. S. 24), Høkere, Apotekere, Marskandisere, Handlende med gamle Bøger og gammelt Jærn, Agenter i andet end Assuranceforretning, Mæglere, Forlæggere, Redere og Beværtere.

For de under Loven faldende Firmaer gælde de i det følgende angivne Regler, hvis Overtrædelse straffes med Boder fra 5 til 500 Kr. (§ 23). Sagen behandles som offentlig Politisag (§ 24).

§ 9. Enkeltmands Firma skal [hvad enten det er anmeldt eller ej] indeholde hans Efternavn med eller uden Fornavn. Det maa ikke indeholde Noget, som antyder et Selskabsforhold eller, at Ansaret er begrænset.

Et ansvarligt Selskabs Firma skal, naar ikke alle Medlemmers Navne ere optagne i samme, indeholde mindst et Medlems Navn samt et Tillæg, der antyder et Selskabsforhold.

Et som Kommanditselskab anmeldt Firma skal indeholde mindst et fuldt ansvarligt Medlems Navn med et Tillæg, der antyder et Selskabsforhold, eller forsaavidt Kommanditisternes Indskud er fordelt paa Aktier, betegner Selskabet som et Kommanditaktieselskab.

I et ansvarligt Selskabs eller Kommanditselskabs Firma maa ikke optages Navnet paa andre Personer end fuldt ansvarlige Medlemmer eller Noget, der gaar ud paa at begrænse Ansaret for Selskabets fuldt ansvarlige Medlemmer.

Et Aktieselskabs Firma skal betegne Selskabets Egenskab af Aktieselskab.

Andre Selskaber med begrænset Ansvar skulle i deres Firma optage et Virksomheden betegnende Udtryk; saadant Firma maa ikke indeholde noget Personnavn.

10. Ingen<sup>1)</sup> maa i sit Firma uden Hjemmel optage Andenmands Navn [i Praxis forstaaet som omfattende baade Personnavn og Firmanavn, udenlandsk saavel som indenlandsk], eller Navnet paa Andenmands faste Ejendom. Et Firma maa ikke indeholde Angivelse af Foretagender, der ikke staa i Forbindelse med Forretningen; ej heller maa et Firma, som angiver en bestemt Art af Forretning, bibeholdes uforandret, naar denne er væsentlig forandret.

De i Registret for samme Kommune indførte Firmaer skulle tydelig adskille sig fra hverandre. Den, som anmelder et Firma, hvori hans Navn findes, skal derfor, naar det samme Firma allerede er indført i Registret for nogen Anden i samme Kommune, ved et Tillæg til sit Navn eller paa anden Maade tydelig adskille sit Firma fra det ældre. Den, som uden at gøre Firma-Anmeldelse vil drive Forretning under eget Navn [altsaa særlig Enkeltmand, der jo ikke er anmeldelsespligtig], maa ikke ved Tilføjelser, Udeladelser eller Ændringer i den hidtil brugte Benævnelse forsætte efterligne indregistrerede Firmaer, som indeholde det samme Navn.

Et særligt Forbud mod uden Hjemmel at anbringe en Andens Firmanavn paa Varer eller disses Emballage indeholdes i Varemærkelovens § 12.

Det antages i Praxis, at en og samme Person eller et og samme Selskab i den Kreds, hvor Forretningen er, kan anmelde flere Firmanavne, naar der til hvert Firmanavn svarer en særlig Virksomhed, og det selv om disse Virksomheder ledes fra samme Forretningskontor, eller naar i øvrigt særlige Billighedsgrunde tale derfor, saaledes ved Sammensmeltning af flere Forretninger, til Værn mod unfair Konkurrence. —

<sup>1)</sup> Efter Sammenhængen i Loven rammer de i denne Paragrafs 1ste Stykke og 2det Stykkes 3dje Punktum indeholdte Forbud egentlig kun de i § 8, jvf. § 35, omhandlede Forretningsfolk, men de maa dog formentlig efter Sagens Natur kunne gøres gældende overfor hvem som helst; i hvert Fald maa de efter Omstændighederne kunne gøres gældende gennem civil Retsforfølgning, (Forbud, jvf. S. 20).

Act concerning handicrafts and factories etc. of 29th December 1857, § 49, 50, 52 and 57 [i. e. trade in second-hand goods, old books and old iron, and minor commerce].

"Those who have a right to carry on a business of commerce and are not obliged to register, joint stock companies and limited partnerships which are not compelled to make a declaration in the commercial register . . . may however do so, and then become entirely subject to the provisions of the Act."

From the rule quoted above it results that this Act does not apply — except in the case of voluntary registration — to those persons who deal in things which are subject to free trading (see above p. 24), small provision dealers, chemists, dealers in second-hand goods, old books and old iron, agents of other than insurance businesses, brokers, publishers, shipowners and caterers.

For those firms to which the Act is applicable the rules indicated below are available, and infringement of these is punished with fines of from 5 to 500 kr. (§ 23). The affair is treated as a public police matter (§ 24).

§ 9. The firm of a single individual shall [whether it has been registered or not] contain his surname with or without his Christian name. It must not contain anything indicating the existence of an association or that the responsibility is limited.

The firm of an unlimited partnership shall, when the names of all its members are not indicated, at least contain that of one of its members and an addition denoting the existence of a partnership.

A firm which has been registered as a limited partnership shall at least contain the name of one fully responsible member, and an addition denoting the existence of a partnership, or when it is a limited partnership with share capital, an addition to this effect.

The firm of an unlimited partnership, or that of a limited partnership, must not contain the names of other persons than those of the fully responsible members, nor anything conducing to limit the liability of such fully responsible members.

The firm of a joint stock company shall indicate that it has the character of a joint stock company.

Other associations with limited liability shall in their firms contain a term denoting the character of their business; such firms must not contain the name of any single person.

10. No person<sup>1)</sup> is allowed, without authorisation, to insert in his firm the name of another person [in practice understood to comprise both the names of persons and of firms, foreign as well as native] or the name of the real estate of another person. A firm must not contain any indication as to enterprises which are not connected with the business; nor may a firm denoting a certain character of business remain unaltered when the business itself has been essentially altered.

The firms taken down in the register of the same parish shall be clearly distinguished from each other. The person who registers a firm in which his name is contained, shall therefore, if the same firm has already been entered in the register for some other person in the same parish, by means of an addition made to his name, or in some other manner, plainly mark the difference between his firm and the former one. Any person who, without registering his firm, desires to carry on a business in his own name [and thus especially single individuals who are not compelled to declare] must not by means of additions, omissions or alterations of the name previously used, intentionally imitate registered firms containing the same name.

A special prohibition against using without authorisation the name of the firm of another person for designation of goods or for their packing is contained in the Trade Marks Act § 12.

It is in practice assumed that the same individual or the same association, in the district where the business of the individual or of the association is carried on, can register several firms when each firm has a separate business corresponding to it, and this is allowed even if these businesses are managed from the same office, or when there are reasonable motives for such a course, for example when several businesses are amalgamated, as a means of protection against unfair competition.

<sup>1)</sup> According to the context of the Act the prohibitions contained in the first paragraph and in the third phrase of the second paragraph of this Article might be taken to only have in view such traders as are mentioned in § 8, see § 35, but they can presumably, according to the nature of the case, be applied to any person; in any case those prohibitions ought according to circumstances to be applied by means of a civil action (Prohibitions, see p. 20).

Om Adgangen til at bevare et bestaaende Firmanavn uanset indtraadte Forandringer indeholdes Reglerne i Lovens §§ 11—13<sup>1)</sup>:

11. „Enke, som fortsætter sin afdøde Mands Forretning, samt Ægteemand, som fortsætter den af hans Hustru før eller under Ægteskabet drevne Forretning, kan benytte Firmaet uforandret. Arvinger, som med fuldt personligt Ansvar fortsætte den Afdødes Forretning, have samme Ret, saafremt den Afdøde har tilladt det, eller, naar han er død uden at have taget anden Bestemmelse, alle Arvinger samtykke deri.“

12. „Indtræder Nogen som Medlem i en bestaaende Forretning, der hidtil har været drevet af Enkeltmand, et ansvarligt Selskab eller et Kommanditselskab, kan Firmaet vedblivende føres uforandret. Det Samme gælder, hvis et Medlem udtræder af et ansvarligt Selskab eller af et Kommanditselskab; dog maa hans Navn ikke bibeholdes i Firmaet, medmindre han har tilladt det, eller, hvis han er død uden at have taget anden Bestemmelse, alle hans Arvinger samtykke deri.“

13. „Udenfor de ovennævnte Tilfælde kan Overdragelse af Firma ikke finde Sted. Dog skal det, naar en af Enkeltmand, ansvarligt Selskab eller Kommanditselskab drevne Forretning overdrages til Enkeltmand, ansvarligt Selskab eller Kommanditselskab, være tilladt at vedtage, at den nye Indehaver bibeholder Firmaet med et Tillæg, som antyder Efterfølgerforholdet.“ [En Efterfølgers Efterfølger forlanges i Praxis betegnet som saadan eller som „anden Efterfølger“ eller paa lignende Maade.]

Af de angivne Regler følger, at — bortset fra Enker, Ægte mænd og Arvinger — kan et Firma ikke overdrages uforandret til en ny Indehaver paa anden Maade end derved, at den nye Mand først indtræder som Medlem af Forretningen, og den ældre derefter udtræder.

Loven indeholder ingen særlig Regel om, at den, der indtræder i eller fortsætter et Firma, derved antages at komme til at hæfte for de af Firmaet tidligere paadragne Forpligtelser. Hvorvidt han gør det, maa altsaa afgøres efter almindelige formueretlige Regler.

Firmaloven traadte i Kraft den 1 Juli 1889 og fandt ved sin Ikrafttræden ogsaa Anvendelse paa da bestaaende anmeldte eller efter den ny Lov anmeldelsespligtige Firmaer, dog med følgende Begrænsning (jvf. § 37): Forsaavidt de bestaaende Firmaer havde været lovlig førte (d. v. s. overensstemmende med den ældre Firmalov af 23 Jan. 1862), kunde de i Lobet af 3 Maaneder fra 1 Juli 1889 optages i Handelsregistret, selv om de ikke fyldestgjorde den nye Lovs Krav; dog skulde der i ethvert Tilfælde, hvor Indehavere af en Forretning havde begrænset deres personlige Ansvar, uden at dette fandt Udtryk i det brugte Firma, til dette føjes Tillæget „begrænset Ansvar“ eller „limiteret“, ligesom ogsaa Aktieselskaber og Kommandit-Aktieselskaber skulde tilføje et Udtryk, der betegnede denne deres Egenskab.

Hvad angaar Maaden, hvorpaa Firmategning bør ske, da omtaler Loven ikke det sædvanlige Tilfælde, at hvert enkelt Medlem har Signatur, idet det her er Skik, at hver for sig undertegner Firmaet uden videre Tilføjning. Derimod hedder det i § 14, at, hvis det er vedtaget i et ansvarligt Selskab, at Retten til at tegne Firmaet kun kan udøves af flere Medlemmer i Forening, bør de, som ere berettigede til at tegne Firmaet, tillige underskrive deres Navne, samt at Firmategning for et Aktieselskab eller andet Selskab med begrænset Ansvar bør være ledsaget af Underskrift af dem, der ere berettigede til at tegne Firmaet. Og videre hedder det i § 15, at, naar en Forretning stilles under Bestyrelse af Tillidsmænd (Likvidatorer, Administratorer) med Ret for dem til at tegne Firmaet, eller naar en Forretning efter Indehaverens Død midlertidig fortsættes af Arvingerne, bør Firmategningen ske paa saadan Maade, at det forandrede Forhold deraf fremgaar.

#### d) Handelsbøger.

De gældende danske Lovforskrifter om Handelsbøger ere ret ufuldstændige. De indeholdes navnlig i Forordningen 1 Juni 1832, Konkurslovens § 148 og Straffelovens § 262.

<sup>1)</sup> Bibeholdelsesretten antages at bestaa, selv om Forretningen flyttes til en anden Kommune, og som Følge deraf ny Anmeldelse i Medfør af § 21 skal ske, medmindre da Reglen i § 10, 2 St. er til Hinder derfor.



Concerning the permission to maintain unaltered the name of a firm, in spite of alterations which have taken place, the rules in §§ 11—13<sup>1)</sup> of the Act read as follows:

11. "A widow continuing her deceased husband's business, and a married man continuing the business which was managed by his wife before or during their marriage, can maintain the firm's name unaltered. Heirs continuing with full personal responsibility a deceased person's business, have the same right if the deceased has allowed it, or, if he has died without having given directions concerning the matter, when all the heirs agree to it."

12. "If a person becomes a member of an existing business which previously has been carried on by a single person, an unlimited or a limited partnership, the name of the firm can remain unaltered. The same holds good if a member retires from an unlimited or a limited partnership; his name must however not be kept in the firm unless he has permitted it, or, if he has died without having decided otherwise, unless all his heirs agree to it."

13. "Except in the above mentioned cases the transference of a firm's name cannot take place. However, when a business carried on by a single person, an unlimited or a limited partnership, is transferred to a single individual or to an unlimited or a limited partnership, it may be stipulated that the new owner shall maintain unaltered the firm's name with an addition denoting the succession." [In practice it is required that a successor's successor shall be designated as such or as "second successor" or in a similar manner.]

From the above-mentioned rules it follows that — apart from widows, husbands and heirs — a firm cannot be transferred unaltered to a new proprietor, unless he becomes a member of the business beforehand and his predecessor, after his entry, retires.

The Act provides no special rule as to whether a person who enters or continues a firm is, by this fact, supposed to become responsible for the liabilities previously incurred by the firm. Whether he is or is not held liable must therefore be decided according to the ordinary rules bearing on this matter contained in the Property Law.

The Firms Act came into force on the 1st July 1889, and when it became law was applied to then existing firms which had been registered or which according to the new Act were compelled to register, with, however, the following limitation (see § 37): If the existing firms had been carried on according to law (i. e. according to the older Firms Act of 23rd January 1862) they could within three months of 1st July 1889 be entered in the commercial register, even if they did not satisfy the provisions of the new Act; there should, however, in every case in which the owners of the business had limited their personal responsibility without the fact having been recorded in the description of the firm, be added "limited responsibility" or "limited", and joint stock companies and limited partnerships with share capital should add a term denoting their character.

With regard to the manner in which the signature of a firm should be made, the Act does not mention the usual case, where each member can sign, it being the custom that each member separately signs for the firm without adding anything further. On the other hand, § 14 provides that if it has been decided in an unlimited partnership that the right to sign can only be exercised by several members jointly, those who have a right to sign ought at the same time to sign their names, and also that the signature of a joint stock company or other association with limited liability ought to be accompanied by the signature of those who have a right to sign for the firm; furthermore § 15 provides that when a business is placed at the disposal of trustees (liquidators, administrators) having a right to sign for the firm, or when a business on the death of its owner is temporarily carried on by his heirs, the signature shall be effected in such a manner as to denote the alterations which have taken place in the firm.

#### d) Commercial books.

The provisions of Danish laws now in force with regard to commercial books are very incomplete. They are chiefly to be found in the Ordinance of 1st June 1832, the Bankruptcy Act § 148 and the Penal Code § 262.

<sup>1)</sup> The right of maintaining unaltered a firm's name is supposed to hold good even when a business is removed to another parish, and when consequently fresh registration must take place according to § 21, unless the rule in § 10, par. 2, runs counter to it.

Forordningen 1832 siger i sin § 1, at det herefter skal være „en ufravigelig Pligt for alle Grosserer . . . og for dem, der i Provinserne have Borgerskab som Købmænd . . . saa og for Vexellerere, Apotekere, Boghandlere, Handelskommissionærer og Andre, hvis Handel maa sættes over Høkeres, i det Mindste at være forsynede med en Journal og en Hovedbog“. Reglen betragtes dog kun som gældende for Købstadhandlende, ikke for Handlende, der have deres Forretning paa Landet, og hermed stemmer det, at Fdgns. § 4 udtrykkelig paalægger de Fabrikanter, der have Udsalg af deres Fabrikater i en Købstad, men ikke andre Fabrikanter, den samme Bogføringspligt.

Til dem „hvis Handel maa sættes over Høkeres“ henregner Praxis: Enhver, der driver Handel i Henhoid til Detailhandlerborgerskab, endvidere Materialister, Tommerhandlere, Vinhandlere og Brændevinshandlere. Banker og Forbrugsforeninger med Borgerskab anses ligeledes bogføringspligtige. Det samme gælder, tildels i Kraft af særlige Lovregler, om Sparekasser, Livsforsikringsselskaber, Partrederier, Mæglere, Apotekere og Ølbryggere. Blandt dem, der foruden Høkere og andre Smaahandlende antages at være uden Bogføringspligt, maa nævnes Handlende med gamle Bøger og gammelt Jærn, Haandværkere samt — om end med tvivlsom Foje — Speditører og Assuranceagenter.

Journal og Hovedbog skulle være forsynede med Sidetal, gennemdragne med en Lidse, stemplede og autoriserede af Underøvrigheden. De kunne fores i hvilket-somhelst Sprog, naar der blot i paakommende Tilfælde for Retten kan fremlægges behørig autoriserede Oversættelser; dog er det udtrykkelig paalagt Bekendende af den mosaiske Religion at fore deres Handelsbøger i det danske eller tyske Sprog med gotiske eller latinske Bogstaver og efter den her gældende Tidsregning.

I Journalen indføres alle Forretninger efter Tidsfølgen, og fra den sker Overførsel i de andre Bøger. Den deles i Praxis gerne i Kassebog og Memorial (Kladde).

I Hovedbogen skal Enhver, med hvem den Handlende staar i Mellemregning, have sin Konto, paa hvilken anføres hans Tilgodehavende og Skyld (Kredit og Debet).

De Handlende, som ikke ere forpligtede til at føre Bøger, have dog Ret til, hvis de ønske det, at faae deres Handelsbøger autoriserede. Ligeledes kunne de, der ere forpligtede til at føre Handelsbøger, ogsaa faae andre Bøger autoriserede end netop Journal og Hovedbog.

Det hedder vel i Forordn. 1832, § 7, at „det skal paaligge vedkommende Øvrigheder, ved alle forekommende Lejligheder at have Indseende med, at de Handlende ere forsynede med de befalede Bøger, og at disse ere indrettede paa anordnet Maade“. Noget effektivt Tilsyn kan imidlertid af nærliggende praktiske Grunde ikke føres, og det saa meget mindre som der ikke er foreskrevet nogen Straffebestemmelse for Ikke-Opfyldelse af Bogføringspligten, bortset fra Konkurstilfælde. Pligtens Opfyldelse søges kun fremtvungen ad indirekte Vej (og i Virkeligheden paa meget ufyldstgørende Maade), idet nemlig Undladelse af Bogføring dels afskærer Vedkommende fra at opnaa Tvangsakkord under Konkurs, dels i Konkurstilfælde kan paadrage Straf efter Straffelovens § 262, der er saalydende:

„Befindes det, at Nogen, som er pligtig til at føre Handelsbøger, og hvis Bo er kommen under Fallitbehandling, har forvansket, bortskaffet eller tilintetgjort disse Bøger eller har ført dem paa en uredelig Maade eller i svigagtig Hensigt undladt at føre dem, straffes han med Fængsel paa Vand og Brød eller med Forbedringshusarbejde indtil 2 Aar.

Har Fallenten gjort sig skyldig i grove Uordener i Henseende til Førelsen af sine Handelsbøger, bliver han at straffe med simpelt Fængsel indtil 6 Maaneder.“

Den paa Grundlag heraf udviklede strafferetlige Praxis straffer efter Omstændighederne ogsaa Undladelse af at føre andre Bøger end de to af Forordningen 1832 nævnte: Journal og Hovedbog, nemlig naar Ikke-Førelsen af vedkommende Bog efter Forretningens Omfang og Beskaffenhed maa betegnes som grov Uorden.

The Ordinance of 1832 says in its § 1 that henceforth it shall be "a strict obligation for all wholesale dealers . . . and for those who in the rural districts have obtained a license as traders . . . and also for money changers, chemists, booksellers, commercial agents and others whose trade is superior to that of a small provision dealer, to be provided with at least a day-book and a ledger." This rule is however considered to be applicable only to traders in towns, not to traders who have their business in the rural districts, and it is in accordance with this that § 4 of the Ordinance expressly imposes on manufacturers having sale rooms in towns, but not on other manufacturers, the same obligation of keeping books.

Amongst those "whose trade is superior to that of a small provision dealer" in practice are classed: Any person who carries on a business with a retailer's license, also druggists, timber merchants, wine merchants and spirit merchants. Banks and co-operative societies with a license are also considered as being compelled to keep books. The same rule obtains, partially owing to special provisions of the law, with regard to savings banks, life assurance companies, shipowners with share capital, brokers, chemists and beer brewers. Amongst those who, apart from small provision dealers and other minor traders, are not compelled to keep books, must be mentioned dealers in old books and old iron, handicraftsmen and — although it is doubtful whether there is a sufficient reason for this exception — forwarding agents and insurance agents.

Day-book and ledger must be paged, have a cord running through them, be stamped and authorised by the local authority. They may be kept in any language, provided that, should occasion demand it at the law courts, duly authorised translations can be produced; adherents of the Jewish religion, however, are expressly enjoined to keep their commercial books in the Danish or German language, in Gothic or Latin letters and in agreement with the calendar which is here being used.

In the day-book are entered all transactions as they occur, and from this they are copied into other books. The day-book is in practice as a rule divided into cash-book and waste-book (rough draft).

In the ledger all persons with whom the trader has transactions must have an account, showing his credits and debts (credit and debit).

Those traders who are not compelled to keep books are, however, entitled, if they so desire, to have their commercial books authorised. Furthermore those who are compelled to keep commercial books can also have books authorised other than merely the day-book and ledger.

It is true that § 7 of the Ordinance of 1832 provides that "it shall be incumbent on the competent authority on all occasions which may arise to see that the traders are provided with the prescribed books, and that these are kept according to the rules of the authorities." For obvious practical reasons an efficient supervision is however out of the question, and this is especially so from the fact that the law provides no punishment if the obligation of keeping books is not carried out, apart from cases of bankruptcy. It is only indirectly that the authorities can compel traders to keep books (and then only in an inadequate manner), for example the omission to keep books in the first instance debar the interested person from obtaining composition in case of bankruptcy, and secondly the interested person if he has become bankrupt incurs punishment according to § 262 of the Penal Code, which reads as follows:

"If it is found that anyone compelled to keep commercial books, whose property is in the hands of the official receiver has falsified, removed or destroyed these books, or has kept them in an irregular manner, or with a view to defraud has omitted to keep them, he shall be punished with imprisonment on bread and water or with imprisonment in a house of correction for a term not exceeding two years.

If the bankrupt is guilty of serious irregularity with regard to the keeping of his books, he will be punished with ordinary imprisonment for a term not exceeding six months."

The practice of the Penal Code evolved on this basis punished also, according to circumstances, the omission to keep other books than the two mentioned in the Ordinance of 1832, day-book and ledger, for example when the non-keeping of such other books might be considered, owing to the scope and character of the business, as a serious irregularity.

Den, der her i Landet<sup>1)</sup> har ordentlig forte, autoriserede Handelsbøger, indrommes der visse Bevisfordele, forudsat at Vedkommende søger Betaling i Henhold til Bøgerne, for en gros Handlens Vedkommende inden 2 Aar, for Detailhandlens Vedkommende inden „Aar og Dag“ (d. v. s. et Aar og 6 Uger). Naar intet andet Bevis tilvejebringes for eller imod Fordringens Rigtighed, holdes nemlig Tilforslerne i Bøgerne angaaende det omstridte Forhold for rigtige, medmindre Modparten tør benægte Rigtigheden med sin Ed. Kan saadan Ed ej paalægges, enten paa Grund af Medkontrahentens Død eller af anden Aarsag (f. Ex. naar Modparten erklærer ikke længere at kunne mindes det onspurgte Forhold), kan det efter Omstændighederne tillades Købmanden eller den, der har fort hans Bog, at bekræfte Indholdets Rigtighed med sin Ed. Ere de angivne Frister oversiddede, bliver det, naar Fordringens Rigtighed benægtes, Købmandens Sag at bevise sit Krav paa anden Maade.

Disse Bevisregler gælde baade mellem Handlende indbyrdes og for Handlendes Mellemværende med Ikke-Handlende, dog at de nævnte Frister ikke behøve at overholdes i Forhold til andre Handlende. Naar den anden Handlende ogsaa har fort autoriserede, ordentlige Handelsbøger, hvis Tilforsler ere i Strid med Sagsøgerens Bøger, antages det, at den Enes Bøger ikke kunne gælde mere end den Andens. Sagen maa derfor, saalangt Uoverensstemmelserne strække sig, afgøres uden Hensyn til Bøgerne.

Den, der under en Sag vil paaberaabe sig sine Handelsbøgers Indhold, maa i Benægtelsestilfælde for Retten godtgøre sin Paastands Rigtighed ved at fremlægge enten selve Bøgerne eller en af Notarius publicus attesteret Udskrift. I sidste Fald skal Udskriften være ledsaget af Attest fra Stedets Øvrighed om, at Bøgerne i det Hele ere lovlig forte. Det Eftersyn, som Øvrigheden i denne Anledning maa have Adgang til, angaar dog kun hele den ydre Indretning og maa ikke af Øvrigheden udstrækkes til selve Bøgernes Indhold.

Til de fremstillede Regler maa endnu føjes Konkurslovens § 148 om Pligten til at foretage Statusopgørelse:

„Enhver, som ifølge denne Lov er at anse som Handlende, Skibsreder eller Fabrikant, skal være forpligtet til een Gang hvert Aar at opføre en Status over sine Aktiver og Passiver samt at indføre den i sin Hovedbog eller i en til dette Ojemed indrettet Statusbog, der autoriseres uden Betaling, og til hvilken der ikke behøves stemplet Papir. — Dersom den, hvis Bo kommer under Konkursbehandling, befindes paa uredelig Maade eller i svigagtig Hensigt at have opgjort en Status, som ikke stemmer med de virkelige Forhold, eller at have af Skodesløshed eller Forsømmelighed undladt at opføre Status eller ved dens Opgørelse at have gjort sig skyldig i grove Uordener eller Uagtsomheder, straffes han henholdsvis efter første eller andet Stykke i Straffelovens § 262.“

Pligten til at opføre Status paahviler en større Kreds end Pligten til at føre Handelsbøger, nemlig alle, der driver Handelsforretninger (derunder indbefattet Kommissionshandel, Assuranceagentur, Vexeller- og Bankforretninger saavel som Speditionsforretninger), hvad enten Forretningen drives i Købstad eller paa Landet, og derhos alle Redere og Fabrikanter.

Den, der har undladt at opføre Status, har ingen Adgang til under Konkurs at opnaa Tvangsakkord.

Et Regerings-Forslag med ændrede Regler om Handelsbøgers Forelse er i Februar 1911 forelagt Rigsdagen.

### e) Prokura og Handelsfuldmagt.

Om Prokura indeholder Fimaloven af 1 Marts 1889 følgende Bestemmelser:

§ 25. „Har Indehaveren af et under denne Lovs Bestemmelser hørende Firma [jvf. ovf. S. 35] givet Nogen en Fuldmagt, der udtrykkelig betegner sig som Prokura, eller har han paa anden Maade betegnet Nogen som sin Prokurist, er denne bemyndiget til i Alt, hvad der hører til Driften af Fuldmagtgiverens Forret-

<sup>1)</sup> Til de i Udlandet forte Handelsbøger knytter dansk Lovgivning ingen saadan bestemt Bevisfordel.

The person who in this country<sup>1)</sup> has properly kept authorised commercial books, is granted certain privileges in regard to evidence, provided he sues for payment according to his books, if he has been a wholesale dealer for two years, or a retailer for "a year and a day" (i. e. one year and six weeks). When no other evidence is procured upholding or opposing the correctness of the claim, the postings of the books in connection with the contested transaction are considered correct, unless the other party on oath denies their correctness. If such oath cannot be asked for, either owing to the death of the other party or for other reason (e. g. when the opponent declares himself unable to remember the circumstance in question), the merchant, or the person who has kept his book, can according to circumstances be granted permission to confirm the correctness of its contents with his oath. If the periods above alluded to have expired, it is the merchant's business to prove the correctness of his claim in another manner, if it has been contested.

These rules as to procuring evidence hold good both with regard to disputes between traders and other traders and to disputes between traders and non-traders, but the periods above-mentioned can be disregarded when only traders are implicated in a dispute. If the other trader has also properly kept authorised commercial books the postings of which disagree with the books of the plaintiff, it is assumed that the books of one party cannot be more valid than those of the other. The dispute must, therefore, so far as the disagreement goes, be settled without having regard to the books.

A party who in a legal dispute claims the contents of his commercial books to be correct, must, when his opponent denies their correctness before the tribunal, corroborate his own declarations either by producing the books themselves or by means of a copy certified by a public notary. In the latter case the copy must be accompanied by an attestation from the local authority to the effect that the books have in a general way been kept according to law. The inspection of the books which the authority on such occasion is allowed to make, however, only bears on the external arrangement, and must not be extended to the contents of the books themselves.

To the previous rules must further be added § 148 of the Bankruptcy Act concerning the obligation of drawing up a balance sheet:

"Any person who according to this Act is considered as a trader, shipowner or manufacturer, shall once every year be required to show a balance-sheet of his assets and liabilities and to record it in his ledger or a balance book reserved for this purpose, and authorised free of charge, and for which stamped paper is not required. — If a person whose estate is submitted to the Bankruptcy Court is found to have made out in a dishonest manner or with a fraudulent intention a balance-sheet which does not agree with the real facts, or if owing to carelessness or negligence he has omitted to make out a balance sheet, or in drawing it up has been guilty of serious irregularities or carelessness, he shall be punished according to the first or second paragraph of § 262 of the Penal Code."

The obligation of drawing up a balance-sheet is more stringent than that of keeping commercial books, for it is incumbent on all persons who carry on commercial businesses (including commission agents, insurance agents, money changers, bankers and forwarding agents), whether the business is carried on in a town or in the rural districts, and furthermore on all shipowners and manufacturers.

A person who has omitted to draw up a balance-sheet forfeits his right in case of bankruptcy to obtain composition.

A Government Bill with modified rules regarding the keeping of commercial books was submitted in February 1911 to the Rigsdag.

### e) Proxy and commercial authority.

The Firms Act of 1st March 1889 contains the following provisions concerning proxies:

§ 25. "If the proprietor of a firm coming within the provisions of this Act [see above p. 35] has given any person a power of attorney which is expressly declared to be a proxy, or if he has in another manner designated anyone as his proxy, the latter is authorised in everything appertaining to the operations of his principal's

<sup>1)</sup> As to commercial books kept abroad Danish law provides no such definite privilege in regard to procuring evidence.

ning, at handle paa hans Vegne og tegne Firmaet. Dog maa Prokuristen ikke uden udtrykkelig Bemyndigelse afhænde eller behæfte Fuldmagtgiverens faste Ejendomme.“

26. „Prokura kan meddeles flere Personer saaledes, at den kun kan benyttes af disse i Forening (Kollektivprokura)“.

27. „Den Prokuristen i Medfør af § 25 tilkommende Beføjelse kan ikke med Retsvirkning ligeoverfor godtroende Tredjemand indskrænkes til bestemt Tid eller paa anden Maade begrænses.“

28. „Prokuristen bør, naar han meddeler Underskrift, til Firmaet føje et Tillæg, der antyder Prokuraforholdet (per procura, p. p. eller anden Forkortelse af disse Ord), samt tillige undertegne sit Navn. Ved Kollektivprokura bliver at iagttage, hvad der med Hensyn til Antallet af Underskrifter er foreskrevet ved Prokuraens Meddelelse.“

29. „En Prokurist kan ikke overføre Prokuraen til en Anden.“

30. „Prokura kan til enhver Tid tilbagekaldes. Fuldmagtgiverens Død medfører ikke Prokuraens Ophor.“

31. „Prokura kan af Fuldmagtgiveren anmeldes til det Handelsregister, hvori Firmaet er indført eller, i Tilfælde af frivillig Anmeldelse, vilde være at indføre, men maa i saa Fald ikke indeholde nogen Begrænsning eller noget Forbehold, der ikke er hjemlet ved §§ 25 og 26.

Samtidigt med, at Prokuraen anmeldes, skal Prokuristen tegne Firmaet og sin Underskrift i Handelsregistret eller i et særligt Tillæg til samme, forsaavidt det ikke er sket paa Anmeldelsen.“

32. „Forandringer i eller Tilbagekaldelse af en anmeldt Prokura skal anmeldes til Handelsregistret.“

Som det heraf vil ses, er den legale Prokura efter dansk Ret mere begrænset end f. Ex. efter tysk Ret, idet den danske Prokura kun giver Prokuristen Beføjelse til at handle paa Firmaets Vegne i Alt, hvad der hører til (d. v. s. med Rimelighed maa antages at høre til) netop dette Firmas Forretning. Herved maa dog fremhæves, at Handelsregistret om de anmeldte Firmaer, der drive egentlig Handel, ikke indeholder anden Oplysning end, at de drive „Handel“, og at det derfor maa blive Firmaets Sag, naar det overfor den Tredjemand, der har kontraheret med Prokuristen, vil paastaa, at han kendte Firmaets nærmere Art og Begrænsning, at bevise dette.

Videre vil ses, at der ikke er nogen Pligt til at anmelde Prokura til Handelsregistret, samt at, naar Anmeldelse finder Sted, denne vel ikke maa indeholde nogen særlig Begrænsning, men at det paa den anden Side staar Firmaet frit for at gore uanmeldte Begrænsninger i Prokuraen gældende overfor Enhver, der bevislig har kendt dem. Bortset fra Prokura-Reglerne indeholder dansk Lovgivning ingen særlige Regler om handelsmæssig Fuldmagt.

Retsreglerne herom maa altsaa udledes dels af de almindelige formueretlige Grundregler, dels af hvad der er kutymemæssigt.

Som almindelig Regel gælder, at, naar en Principal direkte har givet Tredjemand Meddelelse om, at han indenfor en vis Ramme vil være bunden ved Fuldmægtigens Handlinger, eller naar han har medgivet Fuldmægtigen en skriftlig Fuldmagt, der er bestemt til eller tager sig ud som bestemt til at forelægges for Tredjemand og ogsaa af Fuldmægtigen forelægges denne, bindes Principalen ved, hvad Fuldmægtigen foretager indenfor denne Ramme, selv om Fuldmægtigen derved overskrider de ham privat givne Instruxer. Paa lignende Maade gælder det, at den, der i Kraft af Principalens Dispositioner indtager en vis Stilling i en Forretning, maa antages befojet til med forbindende Virkning for Principalen at foretage alle saadanne Dispositioner, som en saadan Stilling sædvanlig fører med sig, medmindre andet ved særlig Foranstaltning er bragt til Tredjemands Kundskab.

Den, der er ansat som Bestyrer af en Forretning, antages saaledes at kunne forpligte Forretningens Indehaver ved alle saadanne Retshandler, der kunne anses som normale Led i Driften af en Forretning som den paagældende, hvortil dog som Regel ikke vil høre Salg eller Pantsætning af faste Ejendomme, Paadragelse af Vexelforpligtelser, Optagelse af Laan eller Procesførelse.

Hvad Agenter og Handelsrejsende angaar, drager dansk Retspraxis ret snævre Grænser for saadannes præsumtive Befuldmægtigelse. Det er saaledes ved

business, to act on his behalf and to sign for his firm. The proxy, however, must not, without express authorisation to this effect, dispose of or mortgage his principal's real estate."

26. "A proxy can be given to several persons in such a manner as to be used by them only collectively (Collective proxy)."

27. "The power given to a proxy according to § 25 cannot, as against a bona fide third person, be legally limited to a certain time or be otherwise limited."

28. "The proxy shall, when he signs for the firm, make an addition denoting his capacity (per procura, p. p., or other abbreviation of these words), and shall also sign his own name. When a collective proxy is used, due notice shall be taken as to what was stipulated, when the proxy was given, with regard to the number of signatures."

29. "A proxy cannot transfer his authority to another person."

30. "A proxy can at any time be withdrawn. The principal's death does not entail the termination of the proxy."

31. "The proxy can be declared by the principal in the commercial register in which the firm has been entered, or, in the case of a voluntary declaration, in the register in which it would have to be registered, but it must in this event contain no restriction or other reservation which has not been provided in §§ 25 and 26.

Concurrently with the declaration of the proxy, the proxy shall sign the commercial register or a special supplement to the register for the firm with his own name, if he has not already done so on the declaration document."

32. "Alterations in or revocation of a registered proxy shall be declared in the commercial register."

From this can be inferred that legal proxy according to Danish law is more limited than e. g. according to German law, as the Danish procura only authorises the proxy to act on behalf of the firm in all matters appertaining to (i. e. which would in all probability seem to appertain to) the business of this particular firm. In this connection it must be pointed out that the commercial register, with regard to firms carrying on commerce properly so-called, does not contain other information concerning these firms than the mention of the fact that they carry on "Commerce"; it is therefore incumbent on the firm, when it claims against a third party who has entered into a transaction with the proxy that such party was acquainted with the character and limitation of the firm, to prove this fact.

Furthermore, it is considered that there is no obligation to declare the proxy in a commercial register, and also that, when the declaration does take place, this certainly must contain no special limitation, but that on the other hand the firm is at liberty to maintain undeclared limitations as against third persons who it is evident are cognisant of them. Apart from the rules concerning proxies, Danish law contains no special rules with regard to commercial authority.

The legal rules bearing on this matter must consequently in the first instance be inferred from the general fundamental rules contained in the Property Law, and secondly from custom.

The general rule is that when a principal has given a third party direct information to the effect that within certain limits he will be liable for the dealings of his representative, or when he has given his representative an authority in writing which is intended to be shown or looks as if it were intended to be shown to the third party, and which is actually shown by the agent, the principal is liable for what the agent undertakes within these limits, even if the agent exceeds the instructions which have been given to him privately. In a similar manner it obtains that if a person, owing to the principal's arrangements, holds a certain position in a firm, he must be supposed to be entitled to undertake all such acts as such a position generally involves entailing the legal liability of the principal, unless the third party has been specially informed that some other arrangement is to obtain in the particular case.

A person who has been appointed manager of a business is thereby considered to be in a position to legally bind the owner of the business by all such legal acts as normally belong to the exploitation of a business of the kind specified, to which, however, as a rule do not appertain the sale or mortgage of real estate, the endorsement of bills of exchange, the raising of loans or the conduct of a lawsuit.

Concerning agents and commercial travellers Danish legal practice has placed somewhat narrow limits to their presumptive powers. Thus several judgments

en Mængde Domme fastslaaet, at saadanne paa Forhaand kun kunne antages at være berettigede til at indlede Forretningsforbindelser, men ikke uden særlig Grund kunne formodes bemyndigede til at afslutte endelige Handler paa Firmaets Vegne. Dog vil dette kunne blive forpligtet ved de gennem Agenten indkomne Bestillinger, naar det undlader ufortøvet at erklære, at det ikke vil godkende dem. Heller ikke kan Agenten modtage de gennem ham hos en anden Forretning bestilte Varer eller indrømme Kredit, indgaa paa Akkord eller modtage Betaling for de gennem ham solgte Varer — alt dog kun forsaavidt ikke særlig Skik og Brug i det paagældende Firma eller andre særlige Omstændigheder give Hjemmel for andet. Hvorvidt Agenten kan modtage Reklamationer og til Disposition stillede Varer med forbindelse Virkning for Firmaet, beror paa Omstændighederne. Reklamation og Returnering direkte til selve Firmaet er derfor i Tvivlstilfælde altid at foretrække.

En Handelsfuldmagt, der ikke er Prokura, kan ikke anmeldes til Handelsregistret.

### f) Handelsmedhjælper og Agenter.

Bortset fra Lærlingeloven Nr. 39 af 30 Marts 1889, hvis Regler ogsaa gælde for Handelslærlinge, findes i dansk Ret ingen udtrykkelige Lovregler om Handelsmedhjælperes og Agenter Forhold til Principalen. Man maa gaa efter Sædvaner, Lovanalogier (f. Ex. efter Omstændighederne fra Reglerne i Tyendeloven af 10 Maj 1854) eller efter, hvad Sagens Natur tilsiger.

Handelsmedhjælperen maa tiltræde sin Plads i rette Tid, skal med Flid og Paapasselighed udføre sit Arbejde i Henhold til de ham af Principalen givne Ordre, maa erstatte Principalen den Skade, han paafører ham ved Svig, Uagtsomhed eller Mangel paa de Kundskaber, Evner eller Færdigheder, som han, efter hvad der er vedtaget eller forudsat, skulde besidde, og kan ikke ensidig sætte en Anden i sit Sted. Paa den anden Side skal Principalen modtage ham, naar han i rette Tid indfinder sig, kan ikke overdrage sin Ret efter Kontrakten til en Anden, kan ikke uden efter særlig Overenskomst derom paalægge ham Arbejde, der staar i Strid med det for hans Stilling sædvanlige og skal til vedtagen Tid betale det lovede Vederlag. Forsaavidt Medhjælperen staar i fast Tjenesteforhold, der medfører en vis personlig Underordnelse, er hans Vederlagskrav privilegeret i Principalens Konkurslov, dog kun for et Aar tilbage fra sidste Fardag før Konkursen.

Ret til ensidig Ophævelse af Kontrakten uden Varsel maa Principalen have, naar Handelsmedhjælperen f. Ex. gør sig skyldig i Forbrydelser, Haandgribeligheder eller grove Fornærmelser, Ulydighed, vedvarende Skodesløshed, eller naar han mangler de Egenskaber eller Færdigheder, som der ved hans Antagelse udtrykkelig er lagt særlig Vægt paa, naar han trods Advarsel oftere kommer for silde, gentagne Gange befindes drukken osv.

Handelsmedhjælperen paa sin Side kan ensidig træde tilbage, naar f. Ex. Principalen mishandler ham, vedblivende giver ham slet og utilstrækkelig Kost, grovelig krænker hans Rygte ved ugrundede Beskyldninger, ikke betaler ham hans Løn osv.

I øvrigt indgaas Forholdet sædvanlig paa ubestemt Tid med Ret for hver af Parterne til med et vist Varsel at opsige det.

Bogholdere, Kasserere, Pakhusforvaltere, Pladsagenter og almindelige Kontorbetjente (i alt Fald hos Grossister) ere almindeligvis antagne mod aarlig Løn og kunne da i Mangel af anden Aftale opsige og opsiges til enhver Tid af Aaret, med 3 Maaneders Varsel til den 1ste i en Maaned.

Derimod ere almindelige Handelsbetjente i Kjøbenhavn gjerne antagne ugevis eller maanedsvist, og i sidste Fald da saaledes, at de kunne opsige og opsiges med 14 Dages Varsel til den 1ste i den følgende Maaned, medens de udenfor Kjøbenhavn undertiden ere engagerede med Tyendelovens almindelige Skiftetider (1ste Maj og 1ste November) for Oje, saaledes at Opsigelse maa ske med 3 Maaneders Varsel til en af disse, men undertiden ogsaa saaledes, at Opsigelse kan gives naarsomhelst med 3 Maaneders eller kortere Varsel.

Agenter og Handelsrejsende kunne sædvanlig opsige og opsiges uden Varsel eller ved en begyndt Rejses Afslutning, medmindre de da lønnes med fast Gage



have established the fact that such persons can only be considered authorised to introduce business transactions, but not without special arrangement to finally conclude bargains on behalf of the firm. The firm will, however, be legally bound by the orders sent to it by its agents if it has omitted to declare without delay that it is unwilling to recognise them. Nor can an agent receive the goods which through him have been ordered of another firm, nor grant credit, make an arrangement in connection with or receive payment for goods sold by him — all this however only in so far as neither the special usage of the firm in question nor other special circumstances warrant the contrary. It depends on circumstances whether an agent can hear complaints affecting goods and receive goods placed at the disposal of the firm so as to legally bind the firm. It is therefore preferable in doubtful cases to make complaints and return goods direct to the firm itself.

A commercial authority which is not a proxy cannot be declared in the commercial register.

#### **f) Commercial assistants and agents.**

Apart from the Apprentices Act No. 39 of 30 March 1889, the provisions of which also affect commercial apprentices, there are in Danish law no definite legal rules with regard to the relations between commercial assistants and agents and their principals. It is necessary to observe how custom and legal analogies have settled this matter (for example according to circumstances the rules of the Servants Act of 10th May 1854 must be taken into account), or what the nature of the particular case may demand.

The commercial assistant must be punctual, diligent and careful in carrying out his duties according to the orders given him by his principal; he must indemnify his principal for loss caused by fraud or carelessness or through lack of the knowledge, abilities or experience which, according to contract or circumstances, he ought to possess, and cannot of his own initiative ask some other person to perform his duties. On the other hand, his principal must receive him, if he arrives punctually; he cannot cede to another employer his right according to the contract; he cannot without special agreement ask his assistant to do work which is outside the scope of the usual work of his position, and he must at the stipulated term pay him the stipulated salary. In so far as the assistant is a regular servant, and to some extent personally subordinate, his claim as to his salary is a privileged one in the principal's bankruptcy, but only for one year back from the last notice day which occurs before his principal becomes bankrupt.

The principal on his side has a right to cancel the contract without giving notice when for example the commercial assistant renders himself guilty of crimes, violence or serious offences, disobedience or continual carelessness, or when he lacks those qualities or that experience on which at the time of his engagement special stress was laid, or when in spite of warning he frequently arrives too late to his duties, or is repeatedly found drunk etc.

The commercial assistant, on his side, can resign when his principal, for example, illtreats him, continually gives him bad and insufficient food, gravely injures his reputation by unfounded accusations, does not pay him his salary, etc.

As a rule the contract is concluded for an indefinite period with a right on either side to determine it by giving the stipulated notice.

Book-keepers, cashiers, managers of warehouses, agents for a locality and ordinary clerks (at any rate in wholesale dealers' establishments) are usually engaged at an annual salary, and can, in default of other agreement, at any period of the year, give or take three months' notice dating from the first day of the month.

On the other hand, ordinary commercial assistants are in Copenhagen usually engaged by the week or month, and in the latter case they can give or take a fortnight's notice and leave on the first day of the ensuing month, whereas outside Copenhagen they are sometimes engaged according to the ordinary changing periods of the Servants Act (1st May and 1st November); a three months' notice must in this case be given before either of these dates, but sometimes a three months' or a shorter notice can be given at any time of the year.

Agents and commercial travellers can usually give and receive notice at any time or at the end of a tour, unless their salary is partially or entirely a fixed one,

helt eller delvis, i hvilket Fald der gærne vil tilkomme dem 3 Maaneders Opsigelse til den 1ste i en Maaned.

At en fastlønnet Handelsmedhjælper eller Agent ogsaa uden særlig kontrakt-mæssigt Forbud derimod er uberettiget til at paafore Principalen Konkurrence ved for egen eller fremmed Regning at gøre Forretninger i Principalens Branche, anses for selvfølgelig. Lovmæssig Regulering af, i hvilket Omfang Konkurrenceforbud kontraktmæssig kan vedtages, findes ikke.

Om den Agenter og Handelsrejsende tilkommende Provision gælder i Hovedsagen følgende Regler: Der maa tilkomme Agenten Provision for alle de Kunder, som han skaffer, og alle de Forretninger, som disse afslutte med hans Firma, og der maa tilkomme en alene med Provision lønnet Pladsagent Provision af alle de Ordre, der indgaa fra hans Distrikt. Provisionen er fortjent, selv om Sælgeren uden Grund vægrer sig ved at effektuere de optagne Ordre, men ikke naar han af Hensyn til Køberens Usoliditet eller anden gyldig Grund vægrer sig. Provisionen, der i Mangel af anden Aftale sædvanlig er 1 à 2 pCt. af de solgte Vares Værdi, antages dog ikke fortjent, naar Beløbene for de solgte Varer ikke indgaar, medmindre dette kan lægges Sælgeren selv til Last; derimod har Agenten som Regel Krav paa at faa de af ham i Anledning af den sluttede Handel hafte Udlæg godtgjorte.

En Agent antages at have Tilbageholdsret i Prover o. lign. for Kravet paa Løn m. v.

### g) Mæglere.

De gældende danske Retsregler om Mæglere ere stærkt forældede, idet de hvile paa en Forordning af 22 December 1808. Denne Forordning gælder vel kun for de kjøbenhavnske Mæglere, men for de Provinsbyer, hvor Mæglere ere ansatte, ere lignende Regler givne.

Ifølge nævnte Forordning kan Magistraten i Kjøbenhavn beskikke saa mange Mæglere, som den finder fornødent. For at opnaa Beskikkelse kræves, at den Paa-gældende har fort en pletfri Vandel og bestaaet en særlig Prove. Beskikkelsen skal kongelig konfirmeres. Den udnævnte Mægler maa aflægge Ed paa at ville holde sig de givne Forskrifter efterrettelig.

Mæglernes Hovedvirksomhed bestaar i som autoriserede, upartiske Mellem-mænd at virke for Afslutningen af Retshandler af den til deres Fag hørende Art. Forordningen sonderer mellem Vare-, Vexel-, Skibs- og Assurance-Mæglere. For Tiden findes dog ingen Assurance-Mæglere, idet disses Virksomhed efterhaanden er gaaet over til Forretningsførerene og Agenterne for de forskellige Forsikrings-selskaber.

Det er Mæglernes Pligt at udøve deres Virksomhed personlig. De maa derfor ordentligvis kun bruge deres Folk til almindeligt Kontorarbejde, Overbringelse af Slutsedler eller lignende underordnet Hjælp. Dog kunne Skibsmæglere, og i Forfalds Tilfælde ogsaa andre Mæglere, faa en Fuldmægtig beskikket.

Naar nogen til Mæglervirksomheden henhørende Forretning er udført af en uberettiget, medfører det ikke blot Bødeansvar for alle Parter, men tillige skal alt, hvad der saaledes er sluttet ved uberettigede, anses for Intet. Det er forbudt Mæglerne at betjene andre end saadanne Personer, som enten have taget Borgerskab paa Handel eller paa anden Maade dertil ere berettigede.

Ifølge Forordningens § 13 maa „ingen Mægler drive Handel eller befatte sig med noget Købmandsskab, Spedition, Skibsrederi, Vexelnegotie eller andre til Købmandsstanden henhørende Forretninger for egen Regning, samt hverken direkte eller indirekte deri med nogen anden deltage, under sin Bevillings For-tabelse“.

Enhver Mægler er forpligtet til at holde en af Magistraten autoriseret Protokol, hvori han med Dag og Datum indfører alle sine Forretninger, for i paakommende Tilfælde at kunne meddele Udskrifter deraf. Han skal derhos strax eller i det seneste 4 Timer efter, at endelig Handel er sluttet, egenhændig udstede og underskrive Slutseddel.

En saadan af en Mægler inden den foreskrevne Tid udstedt Slutseddel tillægges der i Praxis en særlig Beviskraft. I Almindelighed maa den Part, der vil fremsætte

in which case they as a rule have a three months' notice and leave on the first of a month.

It is an understood thing that a commercial assistant or an agent who is engaged at a fixed salary, even when the contract imposes no special prohibition in this respect, is not entitled to compete with his principal for his own account, or for the account of somebody else in business in the same line as the principal. The law makes no provisions as to the measure in which such competition can be prohibited in a contract.

Concerning commission due to agents and commercial travellers the following essential rules are in force: Commission is due to an agent for all the customers he procures, and for all the transactions which these conclude with his firm, and to an agent for a locality, paid by commission only, commission is due on all the orders coming in from his district. Commission is due even if the seller refuses without reasonable ground to execute the orders received, but not if his refusal rests on the insolvency of the purchaser, or some other valid reason. The commission, which in default of any other agreement usually amounts to from one to two per cent. of the value of the goods sold, is not supposed to be due when the amount for the goods sold is not recovered, unless it can be proved that this is the seller's own fault; on the other hand, the agent can as a rule claim expenses incurred in connection with the concluded bargain.

An agent has the right to retain samples and other similar things for the amount of the remuneration etc. due to him.

### g) Brokers.

The rules at present in force in Danish law concerning brokers are very much behind the times, as they are based on an Ordinance of 22nd December 1808. It must, however, be admitted that this Ordinance is only applicable to brokers living in Copenhagen, but for brokers authorised in the provincial towns similar rules obtain.

According to this Ordinance the magistrate of Copenhagen can authorise as many brokers as he deems necessary. To obtain authorisation as a broker it is required that the interested person shall have a clean record and have passed a special examination. The authorisation is confirmed by the King. The authorised broker must bind himself on oath to conform to the instructions given to him.

The principal operations of brokers consist in concluding as authorised impartial negotiators such legal transactions as belong to their sphere. The Ordinance distinguishes between goods brokers, ship brokers, insurance brokers, and bills of exchange brokers. There are however at present no insurance brokers operating, as their activities have in course of time been transferred to the managers and agents of the various insurance companies.

It is the duty of brokers to carry out their operations in person. They must therefore as a rule only engage their employees to do ordinary clerical work, to transmit brokers' notes, or do similar subordinate work. Shipbrokers, however, and in case of absence also other brokers, can engage substitutes.

If a transaction which is within the sphere of a broker's activities has been concluded by a non-authorised person, this not only entails fines on all the persons concerned, but all such transactions concluded by unauthorised persons are considered as not entered into. The brokers are prohibited from operating on behalf of other persons than those who have either obtained a commercial license or for some other reason are entitled to trade.

§ 13 of the Ordinance provides that "no broker may carry on commerce or engage in transactions as a trader, forwarding agent, shipowner or bills of exchange agent, or engage in transactions appertaining to other branches of commerce, for his own account, neither may he directly or indirectly participate in them in co-operation with other persons, under penalty of losing his authorisation."

It is incumbent on every broker to keep a ledger authorised by the magistrate, into which he must enter with the day of the week and date all his operations in order, if need be, to be able to give copies of them. He must furthermore immediately, or at least within four hours of the final conclusion of a bargain, issue and sign with his own hand a broker's note.

Such a broker's note, issued by a broker within the prescribed time, conveys in practice special weight as evidence. As a rule a person who desires to contest

Indsigelse mod Slutsedlen, fremkomme med Indsigelsen uden ufornodent Ophold, efter at have modtaget sit Exemplar, og derhos, for at Indsigelsen kan komme i Betragtning, styrke den med noget Bevis. At der om en ved Mægler afsluttet Handel fejlagtig ikke er udstedt Slutseddel, gør ikke Handlen ugyldig, naar Vilkaarene paa anden Maade kunne oplyses.

Det er Mæglerne forbudt at give Uvedkommende Underretning om de ved dem afsluttede Retshandler, naar nogen af Parterne har forlangt dem hemmelig-holde.

Om det Vederlag, som Mæglerne ere berettigede til at fordre (Kurtage), findes udførlige Regler i Forordningens § 18, jvf. for Skibsmæglernes Vedkommende Plakat 24 December 1817.

Mæglerne ere forpligtede til hver Uge at besørge udgivet en nøjagtig Pris-kurant for Varer, Vexler, Diskonto, Fonds, Aktier, Assurancepræmier og Sejlskibs-fragter.

Naar en Mægler gaar fallit, skal Skifteretten tage hans Bevilling i Forvaring, og han skal afholde sig fra alle Mæglerforretninger, indtil hans Bo er sluttet og ekstraderet ham til fri Raadighed. Befindes han skyldig i svigagtig Fallit, bliver Bevillingen kasseret. Ogsaa andre lovstridige Handlinger, der svække den for Mæglerbestillingen fornødne Tillid, maa medføre Bevillingens Fortabelse. En Mæglers Fallit skal kundgøres ved Opslag paa Børsen.

Dekjopenhavnske Mæglere udgøre en Korporation med noget over 100 Medlemmer.

I de Købstæder, for hvilke „Mægler- Artikler“ ikke ere givne, saavel som paa Landet, maa Erhverv som Mægler staa aabent for alle.

## II. Handelsselskaber.

Dansk Ret indeholder ingen andre Lovregler, der særlig angaa Handelsselskaber, end de ovf. omtalte, i Fimaloven af 1ste Marts 1889 indeholdte, angaaende Firma-navn, Anmeldelse til Handelsregistret og Prokura. Der findes end ikke nogen særlig Aktielov, men en Regerings-Kommission har i 1910 offentliggjort et af samme udarbejdet Udkast til Love om Aktieselskaber, Kommanditaktieselskaber samt Andelsforeninger, hvilket Udkast for Tiden er Genstand for levende Droftelse.

I øvrigt gør man i dansk Ret som andetsteds en Hovedsondring mellem a) det ansvarlige Handelsselskab — et Interessentskab, der optræder overfor Tredjemand som en Enhed, hvis Samlingsmærke er det fælles Firmanavn, og hvor hver af Deltagerne hæfter fuldt ud, d. v. s. med hele sin Formue, for Opfyldelsen af enhver Selskabet gyldig paadragen Forpligtelse. — b) Kommandit-selskabet — et Interessentskab, der adskiller sig fra det ansvarlige Selskab derved, at kun en eller flere af Deltagerne ere fuldt ansvarlige, medens samtidig den eller de øvrige Deltagere (Kommanditisterne) kun hæfte med et bestemt Indskud, og — c) Aktieselskabet — et Interessentskab, der ligeledes optræder under et særligt Firmanavn, men hvis Ejendommelighed er den, at samtlige Deltageres Hæftelse er begrænset til bestemte Indskud, hvis samlede Masse udgør Aktiekapitalen. — d) Kombinationen: Kommandit-Aktieselskab kan efter dansk Ret meget vel dannes, men er hidtil vistnok ikke forekommet. I hvert Fald har den ikke gjort sig bemærket.

Der er fremdeles Intet til Hinder for, at En eller Flere indskyde Penge i en Forretning enten saaledes, at de skulle have et af Forretningens Gang afhængigt Udbytte, medens de i øvrigt staa som alle andre Kreditorer overfor Forretningen, eller tillige saaledes, at deres Indskud eventuelt skal bære en vis Andel af Forretningens Tab, der altsaa maa regnskabsmæssig opgøres, inden de kunne forlange Resten udbetalt, (stille Selskab). Dansk Retspraxis er imidlertid tilbøjelig til at fortolke utydelige Interessentskabskontrakter derhen, at der ved Indskudet er dannet et egentligt Kommanditselskab i den Forstand, at Indskudet hæfter fuldt ud for Forretningens Gæld, saaledes at Intet af Indskudet kan forlanges tilbage, saalænge Forretningens Kreditorer ikke ere fuldt dækkede.

the correctness of a broker's note, must advance his objection without unnecessary delay after having received a copy of it, and also, in order that his objection may be considered, must support it by means of evidence. If through error no broker's note has been issued for a transaction negotiated by a broker, the bargain does not become null, provided the stipulations can be otherwise ascertained.

Brokers are prohibited from giving to outsiders information about transactions concluded by them, if either of the parties has requested that such transactions shall be kept secret.

With regard to the payment which brokers are entitled to claim (brokerage), there are explicit rules in § 18 of the Ordinance; see with regard to shipping brokers the Placard of 24th December 1817.

It is the broker's duty to see that an exact list of current prices of goods, bills of exchange, discounts, public funds, shares, insurance premiums and the freights of sailing ships, is published every week.

When a broker becomes bankrupt the court for the division of inheritances and bankrupts' estates deprives him of his broker's authorisation, and he is compelled to abstain from all brokers' operations until the bankruptcy proceedings are concluded and his estate has been given back to him for free disposal. If he is found guilty of fraudulent bankruptcy, his authorisation is withdrawn. Also all other illegal acts which are detrimental to the confidence necessary for the functions of a broker entail the loss of the authorisation. A broker's bankruptcy must be published by means of a placard at the Exchange.

The brokers of Copenhagen form a body of upwards of 100 members.

In those towns for which no "brokers' rules" have been published, and also in the rural districts, the business of broker is open to any person.

## II. Trading Associations.

Danish law contains no other legal rules which especially concern trading associations than those mentioned above, contained in the Firms Act of 1st March 1889, relating to the names of firms, the declaration in the commercial register and proxies. There is even no special Act in operation concerning shares, but a Government committee in 1910 published a project, which it elaborated, bearing on joint stock companies, limited partnerships with share capital and co-operative societies, a project which is the subject of lively discussion.

Furthermore, in Danish law, as elsewhere, a capital distinction is made between a) *the unlimited commercial partnership* — an association operating, in its relations with third persons, as a unit the characteristic sign of which is the common name of the firm, and where each of the members is fully liable, i. e. to the extent of his whole fortune, for the fulfilment of all valid liabilities of the association; — b) *The limited partnership* — an association which distinguishes itself from the unlimited partnership by the fact that only one, or some, of the partners is or are fully responsible, whereas at the same time the other partners (the sleeping partners) are liable only for a certain sum invested, and — c) *The joint stock company* — an association which also operates under the special name of a firm, but the peculiarity of which is that the liabilities of all the members are limited to their investments, the united mass of which forms the share capital; — d) The combination: *limited partnership-joint stock company* (limited partnership with share capital) may according to Danish law certainly be formed, but up to the present hardly exists. At any rate it presents no noteworthy feature.

There is furthermore nothing to prevent one or more persons from investing money in a business, either on condition that they shall have a profit dependent on the course of the business, whilst in all other respects their interest in the business coincides with that of other creditors, or on the condition that their investments shall cover a certain part of the losses of the business, for which consequently must be made out an actuarial statement before they can claim the distribution of the surplus (sleeping partnership). Danish legal practice is however inclined to interpret obscure agreements concluded by partnerships to the effect that the investments constitute a limited partnership properly so-called, with the result that the investments are fully liable for the debts of the business, and that no part of the invested money can be claimed as long as the creditors of the business are not fully covered.

### a) Det ansvarlige „navngivne“ Handelsselskab.

Angaaende Reglerne for Dannelsen af dets Firmanavn se ovf. S. 35.

Angaaende dets Anmeldelsespligt overfor Handelsregistret, se ovf. S. 31 ff.

Interessenternes indbyrdes Retsforhold beror først og fremmest paa Indholdet af den mellem dem oprettede Kontrakt. Kun forsaavidt denne ikke bestemmer anderledes, gælde de ndf. fremstillede Regler.

Hvor ikke de konkrete Omstændigheder tyde paa andet, maa det antages, at hver af Deltagerne er pligtig at yde en lige stor Andel af den for Interessentskabets Formaal fornødne Kapital og udføre en lige stor Del af det fornødne Arbejde.

Den, der undlader at indbetale pligtigt Indskud i rette Tid, ifalder almindeligt Moraansvar, og er Forsømmelsen med Hensyn til Indbetaling af Penge eller Præsteren af Arbejde væsentlig, giver den Medinteressenterne Ret til at fordre Selskabets Oplosning eller den forsømmelige Deltagers Udelukkelse.

Derimod ere Interessenterne ikke uden særlig Hjemmel pligtige at gøre nye Indskud udover det fra først af aftalte eller forudsatte, og navnlig kan Majoriteten ikke tvinge Minoriteten til saadant.

En Interessent maa antages pligtig til i Udførelsen af Selskabets Anliggender at vise den Agtpaagivenhed, som en ordentlig, fornuftig Forretningsmand plejer at vise i den paagældende Art af Forretninger.

Det maa vistnok i Almindelighed betragtes som stiltiende forudsat, at en Interessent ikke paa egen Haand for egen eller andens Regning maa drive nogen med Selskabets Forretning konkurrerende Virksomhed.

Hvad Forretningsledelsen angaar, antages det ved de anmeldelsespligtige Handelsselskaber, at hvert Medlem maa formodes berettiget til at foretage alle de til Selskabets Næringsvej normalt hørende Forretninger, dog kun saalænge ingen af de andre i det enkelte Tilfælde nedlægger Indsigelse. Til paa egen Haand at antage eller afskedige Prokurister kan den enkelte Interessent dog næppe antages berettiget.

Hvis Selskabet derimod horer til de — i øvrigt kun faa — Handelsselskaber, der ikke ere anmeldelsespligtige, eller drejer det sig om ekstraordinære Foranstaltninger eller om Antagelse eller Afskedigelse af Prokurister, eller er der af nogen Interessent nedlagt Protest mod en vis Handlings Foretagelse, maa ingen Bestemmelse tages, medmindre samtlige Medlemmer ere enige.

Dog maa vistnok under alle Omstændigheder hver enkelt Interessent være berettiget til uanset Protest fra anden Side at foretage de absolut nødvendige konserverende Forholdsregler, saasom sælge Varer, der meget hurtigt vilde fordærves, betale forfaldne Skatter o. lign.

Den Interessent, der har udført Forretninger paa Selskabets Vegne, er selvfølgelig pligtig at aflægge behørigt Regnskab for denne sin Virksomhed og paa den anden Side berettiget til af Selskabet at faa dækket de Udgifter, som han herved med Foje har afholdt. Vederlag for selve sin Virksomhed vil han næppe kunne fordre, medmindre denne efter sin Art ligger helt udenfor, hvad Interessenterne kunne antages at have villet paatage sig at udføre personlig.

Enhver af Interessenterne maa uden Hensyn til, hvorledes hans Stilling i Interessentskabet i øvrigt er, være berettiget til at faa Oplysning om, hvorledes Selskabets Anliggender ledes, og hvorledes Status er. Der kan derfor bl. a. ikke nægtes ham Adgang til Forretningslokalerne eller til Eftersyn af Selskabets Bøger og Papirer.

Om Fordelingen af Vinding og Tab mellem Interessenterne vil der ordentligvis være truffet udtrykkelig Aftale. Hvor saadan mangler, opstiller Teorien en Række præsumtive Fordelingsregler, der dog i Virkeligheden ikke sige andet og mere, end at Fordelingen bør foretages paa den naturligste og retfærdigste Maade. Der er i Handelsstanden Tilbøjelighed til først at beregne almindelig Handelsrente af den indskudte Kapital, saa at først det derefter fremkomne Udbytte eller Tab bliver at fordele.

I Mangel af anden Bestemmelse maa enhver af Interessenterne kunne forlange den ham tilkommende Rente og Andel af Overskud udbetalt til de Tider, der ved Forretninger af den paagældende Art ere de for Opgørelse sædvanlige, hvorved

### a) The unlimited trading partnership.

With regard to the rules as to how the name of the firm is formed see above p. 35.

With regard to its obligation of making a declaration in the trade register, see above p. 31 *et seq.*

The legal relations between the partners are in the first instance dependent on the contract concluded by them. Only when the contract does not decide otherwise, the rules given below apply.

Where the circumstances do not point to a different conclusion, it must be assumed that the partners should each contribute an equal share of the capital necessary for realising the object of the partnership, and each perform an equal share of the work required.

The partner who omits to pay his contribution in due time, incurs the ordinary responsibility for the delay, and if the omission with regard to payment of money or the performance of work is considerable, it entitles the co-partners to demand the dissolution of the partnership or the expulsion of the defaulting partner.

On the other hand, the partners are not required, unless there has been a special agreement, to pay contributions beyond what was at first stipulated or assumed, and in particular the majority cannot compel the minority in this respect.

In carrying out the operations of the partnership every partner is required to give proof of the attention which the ordinary careful business man manifests in the branch of business concerned.

It must certainly as a rule be considered as tacitly assumed that a partner must not for his own account, or for that of others, carry on any concern in competition with the business of the partnership.

As to the management of the business, it is assumed in the case of such partnerships as are bound to make a declaration in the commercial register, that each partner must be supposed to be entitled to undertake all the transactions which normally belong to the exploitation of the partnership, but only in so far as none of the others in a particular case make an objection. A single partner can, however, scarcely be allowed the right to engage or dismiss proxies of his own accord.

If, on the other hand, the partnership belongs to the commercial partnerships — a very restricted class it must be admitted — which are not liable to make a declaration, or if it is a question of extraordinary arrangements, or of the engagement or dismissal of proxies, or if any partner has objected to the carrying out of a certain act, no decision must be come to, unless all the partners agree.

Under all circumstances, however, each individual partner, in spite of protest from his co-partners, must presumably be entitled to take absolutely necessary precautionary measures, such as selling goods which might very quickly deteriorate, paying taxes that have fallen due, etc.

The partner who has carried out business on behalf of the partnership is of course required to give an adequate account of his operations, and on the other hand he can require the partnership to refund the expenses which he has reasonably incurred. He cannot claim compensation for the operations themselves, unless, owing to their special nature, they are entirely beyond the scope of what the partners can be assumed to have agreed to undertake in person.

Each of the partners, without having regard to his position in the partnership in other respects, is entitled to obtain information regarding the conduct of the business and its balance-sheet. Access to the premises of the business can consequently not be refused him, nor can he be debarred from inspecting the books and papers of the partnership.

The distribution of profits and losses between the partners is, as a rule, regulated by a definite agreement. If this does not exist, there is in theory a series of presumptive rules of distribution, which however in reality imply nothing but that the distribution should be made in the most natural and equitable manner. There is in the trading class a tendency to calculate first ordinary commercial interest on the invested capital, so that gain or loss cannot be apportioned until this has been deducted.

In default of other provision each partner can demand that the interest due to him and his share of the gain shall be disbursed to him at periods which are customary for settlements in businesses of the kind in question; in this connection it must

bemærkes, at de fleste Handelsselskaber ere pligtige at foretage en aarlig Statusopgørelse (jvf. ovf. S. 39). Hvis der til Forretningen efter dens Art knytter sig særlig Usikkerhed, maa de bestyrende Medlemmer kunne forlange en passende Del af Udbyttet henlagt til et Reservefond, ligesom selvfølgelig den fornødne Kassebeholdning altid maa tilbageholdes.

En Interessent kan ikke uden alle Med-Interessenters Samtykke optage en Tredjemand i Selskabet eller overdrage ham sin egen Part.

Derimod antages enhver Interessent, der ikke tager Del i Selskabets Ledelse, at kunne gyldig slutte Kontrakt med en Udenforstaaende om, at hans eventuelle Udbytte eller Tab skal henholdsvis overlades til eller dækkes af denne Udenforstaaende (Subpartner, Croupier). Dette er i Virkeligheden en Selskabet som saadan uvedkommende Ordning. Om derimod et bestyrende Medlem kan træffe saadan Ordning anses mere tvivlsomt, da jo Vedkommendes personlige Interesse i Selskabets Velfærd derved kan svækkes.

At den enkelte Interessent, ikke vilkaarlig kan udskydes eller udløses af de andre, er givet.

Retsforholdet til Tredjemand. Da Foretagelsen af den foreskrevne Anmeldelse til Handelsregistret ikke er nogen Betingelse for, at et Selskab gyldig kan træde i Virksomhed, er Tredjemand berettiget til at anse Selskabets Virksomhed som begyndt, ikke blot naar Anmeldelse er sket, men ogsaa naar Selskabet uden Anmeldelse faktisk er traadt i Virksomhed, eller den enkelte Interessent foreviser Legitimation til at begynde.

I ethvert anmeldt eller dog anmeldelsespligtigt, ansvarligt Selskab anses — bl. a. som Følge af Forudsætningen i Fimalovens § 18 Nr. 4 (jvf. ovf. S. 33) — enhver af Interessenterne berettiget til paa egen Haand at tegne „Firmaet“, d. v. s. forpligte Selskabet ved alle saadanne Retshandler, som normalt falde ind under Driften af Selskabets Næringsvej, saaledes som Tredjemand kender denne enten gennem Anmeldelsen til Handelsregistret eller paa anden Maade. Han kan saaledes kobe og sælge Varer, rejse Laan, udstede Vexler, give Kvittering, leje nødvendige Lokaler, engagere de nødvendige Medhjælpere, repræsentere Selskabet i processuelle Forhold osv. Derimod kan han ikke uden særlig Bemyndigelse antages berettiget til at foretage mere ekstraordinære Foranstaltninger, f. Ex. kobe, sælge eller pantsætte faste Ejendomme eller bortgive Interessentskabets Ejendele i større Omfang. Derhos kan den Tredjemand, der veed, at Selskabet kun driver Forretning i en bestemt Branche, næppe være befojet til at gaa ud fra, at den enkelte Interessent uden videre kan forpligte Selskabet ved større Forretninger i en ganske anden Branche.

Den ovenangivne Hovedregel om hver enkelt Interessents Signaturbeføjelse gælder derhos kun, forsaavidt det ikke til Handelsregistret er anmeldt, at vedkommende Interessent enten helt er udelukket fra Signaturen eller kun kan udøve den i Forbindelse med en eller flere af de andre Interessenter (Kollektiv-Signatur).

Indskrænkninger af anden Art, f. Ex. at visse Forretninger kun skulle kunne afsluttes af en Interessent, visse andre kun af en anden, eller at et i øvrigt signaturberettiget Medlem ikke skal kunne udstede Vexler osv., modtages ikke til Handelsregistret, og næppe heller en Kollektiv-Signatur for en Interessent sammen med en Prokurist. Derimod ere Begrænsninger af denne eller anden Art, som i det enkelte Tilfælde ad anden Vej ere komne til Tredjemands Kundskab, bindende for denne.

Ved Selskaber, der hverken ere anmeldelsespligtige eller frivillig anmeldte, erhverver Tredjemand kun Ret mod Selskabet, naar han enten kontraherer med samtlige Interessenter eller i Henhold til de almindelige Fuldmagtregler havde Hjemmel til at betragte den Enkelte som bemyndiget til at repræsentere Selskabet.

Indenfor det samme Omraade, indenfor hvilket de enkelte Interessenter i Forhold til Tredjemand ere berettigede til at handle for Interessentskabet, bliver dette ogsaa ansvarligt for de af disse begaaede Retsbrud, f. Ex. naar en Interessent paa Interessentskabets Vegne leverer ukontraktmæssige Varer eller fremsætter falske Opgivelser ved Forsikring eller forbruger de af ham paa Interessentskabets Vegne i Depositum modtagne Ting.

Hvad angaar Interessenternes Hæftelse for Selskabets Gæld, er Reglen den, at alle Medlemmer af et navngivent Interessentskab hæfte solidarisk



be observed that most partnerships are compelled to make out an annual balance-sheet (see above p. 39). If according to the nature of the business considerable risk is incurred, the managing partners can demand that a suitable part of the gain shall be carried to a reserve fund, and the necessary amount in cash must of course always be available.

A partner cannot without the consent of his co-partners admit a third person to the partnership, or transfer his share to him.

On the other hand, each partner who has no part in the conduct of the business is supposed to have a legal right to enter into agreements with a stranger concerning his eventual gain or loss, that is to say, that it may be either transferred to or refunded by this third person (sub-partner, croupier). This is in reality an arrangement which does not concern the partnership. But it is open to much doubt whether a partner who is in the management can make such an agreement, as his personal interest in the prosperity of the partnership might be weakened by such a course.

It is certain that a single partner cannot be arbitrarily expelled or paid off by the others.

*Legal relations with third persons.* As the prescribed declaration in the commercial register is not necessary in order that a partnership can legally start its operations, third persons are entitled to consider the partnership operations as commenced, not only when the declaration has taken place, but also when the partnership, without making a declaration, has actually started its operations, or when a single partner can show that it is authorised to start.

In every unlimited partnership which has been declared, or which is liable to declare, each of the partners — for example as a consequence of the supposition contained in the Firms Act § 18 No. 4 (see above p. 33) — is considered as being entitled to sign “the firm name” alone, i. e. to contract liabilities for the partnership through such legal acts as are normally within the province of the partnership business as third persons know it, either through the declaration in the trade register or for any other reason. He can consequently purchase and sell goods, contract loans, issue bills of exchange, give receipts, rent the necessary business premises, engage the necessary assistants, represent the partnership in legal actions etc. On the other hand, he cannot without special authorisation be considered as entitled to take specially important measures, as for example the purchase, sale or mortgage of real estate or the alienation on a large scale of the property of the partnership. Furthermore, third persons who know that the partnership only does business in a certain line, can hardly be entitled to suppose that an individual partner can contract liabilities for the partnership in respect of important transactions in quite another line.

The chief rule, mentioned above, concerning the signature of each individual partner only holds good in so far as declaration has not been made in the commercial register that the partner in question has no right of signature, or that he can only sign in connection with other partners (collective signature).

Limitations of another nature, for instance that certain transactions can only be entered into by one partner, certain others only by another partner, or that a partner having the right to sign for the firm shall not be authorised to issue bills of exchange etc., are not accepted by the commercial register, nor the collective signature of one partner and a proxy. On the other hand, limitations of this or any other kind which in the particular case may have come to the knowledge of third persons from other sources, are legally binding on such third persons.

In the case of partnerships which are neither compelled to declare, nor have voluntarily declared, third persons can only obtain a claim against the partnership, either when they negotiate with all the partners, or when according to the ordinary rules of agency they are entitled to consider an individual partner, with whom they have been negotiating, as authorised to represent the partnership.

To the same extent as the individual partners in respect of third persons are entitled to act on behalf of the partnership, the partnership in its turn is responsible for illegal acts committed by the partners, e. g. when a partner on behalf of the partnership delivers goods which are not according to agreement, or makes false statements in the case of insurance, or uses materials which have been deposited with him in his capacity of representative of the partnership.

As to the responsibility of the partners for the debts of the partnership the rule is that all the members of an unlimited partnership are jointly responsible for the

for de Selskabet gyldig paadragne Forpligtelser. Bestemmelser om en anden Ordning modtages ikke til Handelsregistret; (dog have de ældre i Henhold til Firma-loven af 23 Jan. 1862 foretagne Anmeldelser kunnet fornyes med Bibeholdelse af Bestemmelser om, at Interessenterne kun hæfte subsidiært solidarisk eller endog kun pro rata, dog kun med en Tilføjelse, som f. Ex. „limeret“, der viser Ansvarets Begrænsning). Det antages overhovedet i dansk Ret, at flere, som have forpligtet sig i Fællesskab uden at begrænse deres Ansvar, i Reglen hæfte solidarisk, og denne Regel bringes da ogsaa til Anvendelse ikke blot paa navngivne Handelsselskaber, men overhovedet paa alle Arter af navngivne Interessentskaber, undtagen netop Partrerier.

Det solidariske Ansvar antages derhos at være principalt solidarisk, saaledes at Kreditor end ikke, hvor der foreligger en særskilt Interessentskabsformue, behøver først at holde sig til denne, inden han sagsøger de enkelte Interessenter personlig.

Medens der saaledes gælder en almindelig Formodning om solidarisk Hæftelse, og ingen Ny-Anmeldelse om Begrænsning deri kan gores til Handelsregistret, forsaavidt navngivne Interessentskaber angaar, er der i øvrigt Intet til Hinder for, at selv saadanne gore Begrænsninger i det solidariske Ansvar i Forhold til Tredjemænd, naar saadan Begrænsning i Tide meddeles denne, og denne udtrykkelig eller stiltiende samtykker i at nøjes med saadan begrænset Hæftelse.

De Selskabsmedlemmer, der hæfte, ere de, der vare Medlemmer af Selskabet paa den Tid, da vedkommende Forpligtelse paadroges dette, om end kun som betinget. Derimod haves i dansk Ret næppe nogen Hjemmel for, at et nyt Medlem ved sin Indtræden i et ansvarligt Selskab skulde blive ansvarlig for den Selskabet før hans Indtræden paadragne Gæld, medmindre han netop overfor Kreditorerne paatager sig en saadan Forpligtelse. Paa den anden Side vedbliver et udtraadt Medlem at hæfte for al den Gæld, som Selskabet har paadraget sig, forinden hans Udtræden blev anmeldt og offentliggjort eller paa anden Maade bragt til Tredjemands Kundskab.

En Person, der staar udenfor Selskabet, men tillader, at hans Navn optages i Firmaet paa en saadan Maade, at der derved maa fremkaldes en Forestilling om, at han er ansvarlig Deltager, maa antages derved at blive ansvarlig for Gælden. Derimod maa Firma-lovens § 12 (ovf. S. 37) antages at hjemle, at den, der har været Medlem af Selskabet, men udtræder, kan tillade, at hans Navn bibeholdes i Firmaet, uden at han derfor bliver ansvarlig for de Forpligtelser, som Selskabet paadrager sig, efter at hans Udtrædelse behorlig er anmeldt og kundgjort eller paa anden Maade meddelt Tredjemand.

Den Kreditor, der har Krav paa Selskabet, kan vælge mellem, om han vil holde sig til Selskabet som saadant eller til en eller flere Interessenter personlig.

Vælger han det første, kan han, hvis Selskabet hører til de anmeldelsespligtige, anlegge Sag paa det Sted, hvor Forretningskontoret findes (Firma-lovens § 34). Er Selskabet ikke anmeldelsespligtigt, beror Adgangen til at søge det paa, om Interessenterne processuelt have samme Værneting.

En over Selskabet erhvervet Dom kan søges exekveret, ikke blot i Interessentskabsformuen, men ogsaa i hver enkelt Interessents private Formue. Derimod kan en over en enkelt Interessent erhvervet Dom kun søges fyldestgjort i hans Særmidler eller i den Del af Interessentskabsmassen eller Udbyttet, som han selv kunde forlange udbetalt.

Den enkelte Interessents Særkreditorer kunne holde sig til dennes Netto-Andel af Selskabsmidlerne (Kapital og Udbytte), men kan kun forlange denne Andel udbetalt i samme Omfang, til samme Tid og i Henhold til samme Opgørelsesmaade, som vedkommende Interessent selv kunde forlange det. Der kan imidlertid i Henhold til kgl. Resol. 18 Aug. 1814 være givet kongelig Konfirmation paa Bestemmelser i Interessentskabskontrakter, gaaende ud paa, at der i den Andel, som ethvert Medlem har i Interessentskabet, overhovedet ikke skal kunne gores Arrest eller Exekution for nogen af ham kontraheret, Fællesboet uvedkommende Gæld, og paa at, naar nogen af Interessenterne dør eller opgiver sit Bo, det, der tilhører den fælles Forretning, ikke skal kunne inddrages under Boets Behandling, men Boet alene skal kunne forlange saa meget udbetalt af Interessentskabet, som ifølge en opgjort Balance er den Afdødes eller Falleredes Andel. En saadan Konfirmation

liabilities legally contracted on behalf of the partnership. Arrangements contrary to this are not accepted by the commercial register; (the older declarations, it must be admitted, made according to the Firms Act of 23rd Jan. 1862, have been renewed, with the retention of certain conditions such as that the partners are only subsidiarily jointly liable, or even only *pro rata*; this, however, only with an addition as, for instance, "limited" to show the limitation of the responsibility). It is in Danish law generally admitted that several persons who in common have incurred a liability without limiting their responsibility, are jointly responsible, and this rule is also applied not only in respect to unlimited commercial partnerships, but to all kinds of unlimited associations with the sole exception of associations of ship-owners.

Further, the joint responsibility is considered primarily as joint, so that creditors, even where there is a special partnership capital, need not in the first instance look to this before suing the individual partners in person.

Whereas thus a general supposition as to joint responsibility holds good, and no fresh declaration limiting it can be made in the commercial register, in so far as unlimited partnerships are concerned, yet there is nothing to prevent these partnerships from limiting their joint responsibility in relations with third persons, when the latter have been informed in time of such limitation, and they expressly or tacitly consent to content themselves with such a limited responsibility.

The responsible partners are those who were members of the partnership at the time when the liability in question was incurred, even if it was only a conditional one. On the other hand Danish law does not go so far as to provide that a new partner when joining an unlimited partnership shall become responsible for debts contracted by the partnership before he joined it, unless in respect of the creditors he has specially taken upon himself such an obligation. But a partner who has left the partnership remains liable for all debts contracted by the partnership before his withdrawal was declared and published, or in some other manner brought to the knowledge of third persons.

A person who is a stranger to the partnership, but permits his name to be used by the firm in such a manner as to imply that he is a responsible partner, must be considered as becoming responsible for debts contracted by the partnership by giving such permission. On the other hand, the Firms Act § 12 (see above p. 37) is supposed to provide that a person who has been a member of the partnership, but withdraws from it, can allow his name to be kept in the firm, without therefore becoming responsible for the liabilities contracted by the partnership after his withdrawal had been duly declared and published, or in some other manner brought to the knowledge of third persons.

The creditor who has claims on a partnership can elect whether he prefers to proceed against the partnership as such, or against one or more of the partners personally.

If he chooses the former alternative he can, if the partnership in question is bound to register, bring an action against it at the place where the firm has its business office (the Firms Act § 34). If the partnership concerned is not bound to register, his right to sue it depends on whether all the partners are in the same jurisdiction.

A judgment rendered against the partnership can be realised not only on the property of the partnership, but also on the private property of each partner. On the other hand, a judgment rendered against a single partner can only be realised on his private property or on that part of the assets or profits of the partnership which he himself is entitled to demand shall be paid to him.

The private creditors of each individual partner can look to his net share of the assets belonging to the partnership for payment (capital and profit), but they can demand payment of this share only in the same measure, at the same time, and according to the same mode of settlement, as obtain when the partner alone is the interested person. According to a Royal Ordinance of 18th August 1814, however, the King can confirm the clauses of partnership contracts which require that the share which each partner holds in the partnership, can in general not be arrested or subjected to execution so as to cover any debt which he has contracted outside the partnership, and that, if any of the partners dies or becomes bankrupt, the property belonging to the common business cannot be included in his estate, which can only claim the payment of so much of the partnership assets as according to a made out balance-sheet is the deceased's or bankrupt's share. Such a confirma-

tilligemed det fornødne af Interessentskabskontrakten skal dog tinglyses for at kunne gøres gældende mod Tredjemand.

Naar Selskabet kommer under Konkursbehandling, anvendes Interessentskabsmassen først og fremmest til Dækning af Selskabskreditorerne. Hvis disse ikke herved opnaa fuld Dækning, lader Praxis dem yderligere konkurrere i den enkelte Interessents Særformue sammen med Særkreditorerne, ikke blot for Restbeløbet, men for deres hele oprindelige Krav.

**Interessentskabets Opløsning.** Interessentskabskontrakten vil ordentligvis indeholde visse Bestemmelser om Ret for en eller flere af Deltagerne til under visse Betingelser at forlange Opløsning og Opgørelse, eller til at forlange Medinteressenters Udtræden eller til selv at udtræde. Uden saadan særlig Hjemmel kan en Opløsning vel vedtages af samtlige Interessenter naarsomhelst, men ikke vilkaarlig besluttet af Bestyrelsen eller Majoriteten.

Er Selskabet blevet insolvent, kan en Opløsning fremkaldes udefra gennem en Konkurs.

Endvidere maa i visse Tilfælde hver enkelt Deltager antages at kunne forlange Selskabet opløst, selv om Intet i saa Henseende er vedtaget i Kontrakten, saaledes naar den fastsatte Tid er udløben eller det fastsatte Ojemed opnaaet, naar Interessentskabet er indgaaet paa ubestemt Tid, og den Paagældende har opsagt Kontrakten med et efter Forretningens Art passende Varsel, naar det tilstræbte Ojemeds Opnaaelse bliver umulig, naar nogen af Medinteressenterne dør eller gaar fallit, eller i væsentlig Grad misligholder sine Forpligtelser ifølge Interessentskabskontrakten, eller naar der overhovedet for den enkelte Interessents Vedkommende bortfalder væsentlige og for de andre Interessenter kendelige Forudsætninger for hans Tiltræden af Interessentskabet.

Ønske de andre at fortsætte Virksomheden, maa de enten ordne sig i Mindelighed med den Opsigende om hans Udtrædelse eller, efter at Opløsning og Opgørelse har fundet Sted, danne et nyt Interessentskab paa egen Haand.

Hvis Opøsningen skyldes Konkurs, foregaar Opgørelsen ved Skifteretten efter de almindelige Konkursregler. Men ogsaa ellers staar det hver Interessent frit for at forlange, at Opgørelsen skal ske ved Skifteretten, hvis Kontrakten ikke afskærer dette. Ellers bestemme Deltagerne selv Formen for Opøsningen, navnlig hvem der skal iværksætte denne. Det kan saaledes vedtages, at en eller flere af Interessenterne overtage Aktiver og Passiver og udløse de andre. I øvrigt maa Realisationen af Aktiver, i Mangel af Enighed om Andet, foregaa gennem Auktion. Hyppig vil Afviklingen blive overdraget til enkelte af Deltagerne eller til særlige udenfor Interessentskabet staaende Personer (Likvidatorer). Tvistigheder maa i saa Fald, om fornødent, afgøres ved sædvanlig Rettergang.

Naar Selskabets Opøsning er bragt til Publikums Kundskab (for anmeldte Selskabers Vedkommende ved Anmeldelse til Handelsregistret, i Konkurstilfælde ved Konkursens Bekendtgørelse), kan Tredjemand derefter kun erhverve Rettigheder mod Selskabet gennem Kontrakt med dem, der forestaa Likvidationen, og kun gennem saadanne Kontrakter, der ere eller af Tredjemand med Føje kunne antages for at være regelmæssige Led i Likvidationen af en Forretning som den paagældende.

### **b) Kommanditselskabet.**

Angaaende Reglerne for Dannelsen af dets Firmanavn se ovf. S. 36.

Angaaende dets Anmeldelse til Handelsregistret se ovf. S. 32. Ifølge den i Teori og Praxis herskende Opfattelse af Fimalovens herhenhørende Bestemmelser er Forholdet i øvrigt det ejendommelige, at selve dette, at Nogen indskyder et Beløb i en andens Forretning, saaledes at der derved dannes et Kommanditselskab, ikke afføder nogen Anmeldelsespligt. En saadan opstaar kun, hvis Komplementaren som Følge af Indskudet vil gøre en Tilføjelse til sit Firmanavn, der antyder et Selskabsforhold (f. Ex. tilføje „& Co.“).

tion, together with the necessary clauses of the partnership contract, must, however, in order to be legally valid as against third persons, be proclaimed in public.

If the partnership becomes bankrupt its property is in the first instance used to pay its own creditors. If the latter are not fully paid thereby, they are in practice also allowed to compete with each partner's private creditors so as to be paid out of his private property, not only with regard to the remainder of the amount due to them, but concerning the whole of their original claim.

*The dissolution of the partnership.* A partnership contract as a rule contains certain clauses regarding the right of one or more of the partners on certain conditions to demand a dissolution and a winding-up of the partnership, or to demand their co-partners' or their own withdrawal. Without such a special clause a dissolution can be agreed upon by all the partners at any time, but cannot arbitrarily be decided upon by the managing partners or the majority.

If the partnership has become insolvent, a dissolution can be brought about from without by means of a bankruptcy.

Furthermore, in certain cases each individual partner is supposed to have a right to demand the dissolution of the partnership, even if there is no clause to this effect in the contract, as for instance when the stipulated time has expired or the stipulated aim has been reached; when the partnership has been formed for an unlimited time, and the interested partner, after giving a suitable notice according to the nature of the business, has informed his co-partners of his intention to terminate the contract; when it becomes impossible to attain the desired object; when any of the partners dies or becomes bankrupt, or essentially neglects his obligations according to the partnership contract, or when in general with regard to the individual partner essential conditions, and with regard to the other partners important conditions, for his joining the partnership become non-existent.

If the other partners desire to continue the business, they must either come to an amicable agreement with the partner who has given to the partnership notice of his withdrawal, or when dissolution and settlement have taken place, form a new partnership on their own account.

If dissolution is due to bankruptcy, settlement takes place at the Bankruptcy Court according to the ordinary rules of this Court. In other cases each partner is at liberty to demand that settlement shall take place at the Bankruptcy Court if the contract does not preclude such a course. Again the partners themselves decide as to how dissolution shall be effected, notably the question as to who shall carry it out. It can for example be agreed on that one or more of the partners shall take charge of the assets and liabilities and pay off the others. Furthermore, assets must be disposed of by auction, in default of other agreement. It frequently happens that the winding-up of a partnership is delegated to some of the partners or to persons outside the partnership (liquidators). If disputes arise they must, if occasion demands it, be settled before an ordinary tribunal.

When the public has been informed of the dissolution of a partnership (in the case of partnerships which are liable to register, by means of a declaration in the commercial register, in the case of bankruptcy, by means of the publication of the bankruptcy), third persons can only obtain claims against the partnership by means of a contract concluded with those who conduct the liquidation of the partnership, and only by means of such contracts as by third persons are considered or can reasonably be considered as being regular consequences of the winding-up of a business such as that in question.

### **b) Limited partnerships.**

Concerning the rules as to how the name of a firm of this kind is formed see above p. 36.

Concerning declarations in the commercial register see above p. 32. According to the interpretation prevailing alike in theory and in practice, with regard to the provisions of the Firms Act, the peculiarity should be noted that, even if a person invests money in another man's business and a limited partnership originates therefrom, this does not result in an obligation to declare the association in the commercial register. Such an obligation only arises when the complementary partner, as a consequence of the investment, desires to make an addition to the name of the firm indicating that there is a partnership existing. (For example by adding "Co.".)

Har Anmeldelse fundet Sted, vil denne ifølge Fimalovens § 18 indeholde Oplysning om hver enkelt Kommanditists Navn og Indskud. Har ingen Anmeldelse fundet Sted, beror den passive Interessents Hæftelse først og fremmest paa Interessenternes indbyrdes Vedtagelse; men — som ovf. S. 44 nævnt — er Praxis tilbøjelig til at fortolke utydelige Interessentskabskontrakter derhen, at Indskudet hæfter fuldt ud for Interessentskabets Gæld, altsaa derhen, at et egentligt Kommanditselskab og ikke blot et „stille Selskab“ er dannet.

Hvis der i et Kommanditselskab er flere fuldt ansvarlige Medlemmer, danne disse for saa vidt et ansvarligt Selskab og ere undergivne de derfor gældende Regler saavel i deres Forhold indbyrdes, som overfor Tredjemand og overfor det Offentlige (Handelsregistret).

Hvad angaar Forholdet mellem den fuldt ansvarlige Deltager (Komplementaren) og Indskyderen (Kommanditisten), synes Opfattelsen i Danmark at gaa ud paa, at der af Komplementarens Indskud i Forbindelse med Kommanditistens Indskud dannes en særlig Formuemasse, der er i Sameje mellem dem efter et bestemt Forholdstal, og med hvilken de under et særligt Firmanavn drive en nærmere bestemt Forretning. Ledelsen af denne maa, naar andet ikke er vedtaget, tilkomme Komplementaren og kun denne; men selvfølgelig behøver Kommanditisten ikke at finde sig i, at Komplementaren benytter Selskabsmidlerne til Foretagender, der ligge udenfor den Forretningsvirksomhed, der er aftalt eller forudsat mellem dem, og enhver væsentlig Misligholdelse af denne eller anden Art kan berettigge Kommanditisten til at forlange Forholdet opløst.

Kommanditisten maa være berettiget til at føre et vist Tilsyn med Forretningens Gang.

Kommanditistens Andel i Vinding og Tab beror paa Kontrakten; udover den indskudte Kapital hæfter han ikke.

Den eller de ansvarlige Medlemmer ville ordentligvis behøve Kommanditistens Samtykke til at optage nye ansvarlige Medlemmer eller sætte andre i deres eget Sted. Hvorvidt de ansvarlige Deltagere egenmægtig kunne optage andre Kommanditister indenfor deres egen Andel, og hvorvidt Kommanditisten egenmægtig kan overdrage sin Andel til Andre, beror paa Omstændighederne.

Kommanditistens Forhold til Tredjemand er dette, at han maa finde sig i, at Selskabets Kreditorer søge Fyldestgørelse i alt, hvad han har indskudt eller forpligtet sig til at indskyde i Forretningen. Direkte kunne Kreditorerne dog kun holde sig til Firmaet eller den eller de ansvarlige Deltagere og maa derfor, hvis Kommanditisten endnu ikke har præsteret sit Indskud, tage Dom over Firmaet eller de ansvarlige Deltagere og i Henhold til denne gøre Udlæg i Kravet paa Kommanditisten.

Hvis nogen Del af den Gæld, der dækkes med Kommanditistens Indskud, ifølge Interessentskabskontrakten skulde have været dækket af den ansvarlige Deltager, har Kommanditisten forsaavidt Regres til denne.

Den ansvarlige Deltagers Privatgæld er Kommanditisten uvedkommende, og for den kan der ikke søges Fyldestgørelse i Kommanditistens Andel af Selskabsformuen.

I Tilfælde af Selskabets Konkurs dækkes Forretnings-Kreditorerne først af Selskabsmassen, saaledes at, hvad der derefter bliver tilbage, fordeles mellem Kommanditisten og det ansvarlige Medlems Bo. Hvis der derimod Intet vilde blive tilbage, idet hele Selskabsmassen maa medgaa til Dækning af Forretningsgælden, og der derhos kun er en enkelt ansvarlig Deltager, er man tilbøjelig til at mene, at Forretningskreditorerne ikke kunne forlange at blive fyldestgjorte forud for den ansvarlige Deltagers Særkreditorer.

Hvis Kommanditisten uden Indsigelse finder sig i, at hans Navn optages i Firmaet, eller han i øvrigt optræder overfor Tredjemand, som om han var ansvarlig, kommer han til at hæfte fuldt ud med sin hele Formue.

Om Kommanditselskabets Opløsning gælder i Hovedsagen de samme Regler som for det ansvarlige Selskab. Dog vil en Kommanditists Død, Fallit, Umyndiggørelse osv. ordentligvis ikke give de ansvarlige Deltagere Ret til at forlange Interessentskabet opløst, medmindre da en saadan Omstændighed fører med sig, at

If, then, a partnership of this kind has been declared in the commercial register, such declaration must according to the Firms Act contain information concerning each individual partner's name and investment. If no declaration has been made, the sleeping partner's liability will in the first instance depend on the agreement concluded between the partners; but — as mentioned above p. 44 — there is in practice a certain tendency to interpret obscure partnership contracts to the effect that the investment in its entirety is liable for the partnership debts, and consequently that a limited partnership properly so-called and not a "sleeping partnership" has been established.

If in a limited partnership, there are several fully responsible partners, these to that extent form an unlimited partnership and are subject to the rules governing such a partnership, alike with regard to their mutual relations, and to their relations with third persons and the public (the commercial register).

As regards the relations between the fully responsible partners (*complementary partners*) and the investors (*limited partners*), opinion in Denmark seems inclined to favour the idea that the complementary partner's investment in connection with that of the limited partners forms a special capital, which is common property between them according to a certain proportion, and by the aid of which, under a special firm name, they carry on a specific business. The management of this must, when nothing else has been agreed on, devolve on the complementary partners and only on them; but of course the limited partners need not suffer the complementary partners to use the funds of the association for enterprises outside the sphere of business which has been stipulated or assumed by them, and every essential error of this or any other kind entitles the limited partners to demand the dissolution of the partnership.

A limited partner is entitled to supervise the business to some extent.

The limited partner's portion of gain and loss is stipulated in the contract; he is not liable beyond his investment.

One or more responsible partners, as the case may be, ordinarily require the limited partner's consent to admit new responsible members, or to put other partners in their own place. It depends on circumstances whether the responsible partners of their own accord can admit other limited partners within the limits of their own share in the business, or whether the limited partners can freely transfer their shares to other persons.

The limited partner's position with regard to third persons is that he must permit the partnership creditors to try to obtain payment out of his investment, or out of what he has pledged himself to invest in the business. — The creditors can however only look to the firm or its responsible members, one or more as the case may be, for payment, and must therefore, if the limited partner has not yet paid his investment, obtain a judgment against the firm or its responsible partners, and according to this judgment issue execution against the limited partner.

If any part of the debt which is covered by the limited partner's investment, ought, according to the partnership contract, to have been covered by the responsible partner, the limited partner can to that extent claim a recovery from him.

The private debts of the responsible partner do not concern the limited partner, and payment of such debts cannot be realised out of the limited partner's share of the partnership property.

In the event of the partnership becoming bankrupt, the creditors of the business are in the first instance paid out of the joint property, and the remainder is distributed between the limited partner and the responsible partner's estate. If on the contrary nothing is left, because the joint property has been expended in payment of the debts of the business, and there is only one single responsible partner, the opinion prevails that the creditors of the business cannot claim to be paid before the responsible partner's private creditors.

If a limited partner makes no objection to his name being made part of the firm, or if with regard to third persons he acts as if he were a responsible partner, he is held liable to the extent of his whole fortune.

As regards the dissolution of a limited partnership, practically the same rules obtain as in the case of an unlimited partnership. However when a limited partner dies, becomes bankrupt, is declared incapable of managing his affairs etc., the right is not thereby conferred on the responsible partners to demand the dissolution



Kommanditisten i væsentlig Grad misligholder sine Forpligtelser, f. Ex. fordi Indskudet endnu ikke er betalt, eller umuliggør for ham at præstere den personlige Virksomhed, hvortil han maatte have forpligtet sig.

### c) Aktieselskabet.

Der eksisterer ikke nogen dansk Aktielov. Et af en Regeringskommission udarbejdet Udkast til Lov om Aktieselskaber, Kommanditaktieselskaber samt Andelsforeninger er nylig (1910) offentliggjort.

Følgen af denne Mangel er, at der hersker den største Frihed i Retning af at danne Aktieselskaber, en Frihed, der navnlig i de senere Aar er blevet i høj Grad brugt og misbrugt.

De Begrænsninger, der kunne opstilles med Hensyn til Aktieselskabers Oprettelse og Ledelse, maa udledes af Lovgivningens almindelige Grundsætninger, derunder Straffelovens Regler om, hvad der kan straffes som Bedrageri, samt af de ovenfor S. 36 og S. 33 omtalte Regler om Dannelsen af Firmanavn og Anmeldelse til Handelsregistret, hvoriblandt skal fremhæves Reglen om, at et Aktieselskabs Firma altid skal indeholde Betegnelsen „Aktieselskab“.

Til Stiftelse af et Aktieselskab behøves herefter i dansk Ret ikke andet end, at mindst to Personer træffe en Overenskomst om at danne et saadant og ikke ved deres Optræden fremkalde den Forestilling hos Tredjemand, at nogen af eller alle Deltagerne hæfte personlig.

Aktiekapitalen kan være et hvilket som helst ubetydeligt Beløb, kan være fordelt paa hvilket som helst Maade, kan være indbetalt i alle mulige Skikkelser, ja, behøver end ikke for nogen Dels Vedkommende at være indbetalt.

Kun forsaavidt det gælder Livsforsikringsvirksomhed, opstiller Lov Nr. 72 af 29 Marts 1904 den Regel, at saadan Virksomhed kun maa drives af Aktieselskaber eller gensidige Selskaber, der have erholdt Tilladelse dertil af Indenrigsministeriet. Ogsaa med Aktieselskaber, der drive Sparekasse-Virksomhed, føres ifølge Lov Nr. 64 af 28 Maj 1880 § 2 en vis Kontrol. Naar i øvrigt enkelte Aktieselskaber have søgt offentlig Autorisation, har det kun været for derigennem at opnaa særlige Begunstigelser f. Ex. Stempelbegunstigelser, Rentegaranti eller Ret til at tage højere Rente end den for Udlaan mod Pant i fast Ejendom ellers normerede.

Vil et Aktieselskab drive en Virksomhed, der forudsætter Borgerskab, maa saadant af Aktieselskabet erhverves (jvf. ovf. S. 26).

Som de for Aktieselskaber og andre „anonyme“ Selskaber særlig karakteristiske Hovedregler opstilles følgende: 1. Selskabet optræder i det mindste formelt som Bærer af Rettigheder og Forpligtelser. Selskabet erhverver og forpligtes kun gennem det dertil beskikkede Organ (Bestyrelsen). Kun denne kan udøve Selskabets Rettigheder og gøre dem gældende. — 2. De Selskabet paa dragne Forpligtelser kunne ikke gores gældende mod Medlemmerne som saadanne, og disse hæfte ikke som saadanne personlig for deres Opfyldelse. — 3. For Opfyldelsen af Selskabets Forpligtelser hæfter derimod Selskabsformuen, hvortil ogsaa henregnes Krav, som Selskabet har paa Deltagerne; og denne Formue hæfter principalt kun for Selskabets Forpligtelser, saaledes at navnlig de enkelte Deltagere eller disses private Kreditorer ikke kunne holde sig hertil, før Selskabskreditorerne ere fyldstgjorte. — 4. Selskabet som saadant kan kontrahere med de enkelte Medlemmer ligesom med Tredjemand og overhovedet have Rettigheder eller Pligter overfor disse. — 5. Selskabets Existens er uafhængigt af de enkelte Medlemmers Personer. Forandring af Medlemmer medfører derfor ingen Forandring i Selskabet.

Aktieselskaber kunne stiftes saavel ved en „Simultanstiftelse“ som ved en „Successivstiftelse“.

I sidste Fald udsendes gerne et Prospektus, og Publikum indbydes til Tegning af Kapitalen ved Subskription. Naar saa et vist Antal Aktier ere tegnede, sammenkaldes Aktionærerne ordentligvis til en Generalforsamling, paa hvilken da Selskabets egentlige Konstituering foregaar.



of the partnership, unless such occurrence entails an essential violation on the part of the limited partner of his obligations, for example when his contribution is not paid up, or when circumstances render it impossible for him to perform the personal work to which he has bound himself.

### c) Joint stock companies.

There is no Danish Act concerning joint stock companies. A project drafted by a Government committee for an Act respecting joint stock companies, limited partnerships with share capital and co-operative associations has recently (1910) been published.

The consequence of such a defect is that the greatest liberty in the formation of joint stock companies obtains, a liberty which, especially in recent years, has been used and abused to a high degree.

The restrictions which may be imposed with regard to the formation and management of joint stock companies must be adduced from the general principles of the legislation, amongst them being the rules of the Penal Code respecting punishment of fraud, and the rules mentioned above p. 36 and p. 33 concerning the manner of forming a firm name, and declaration in the commercial register, and here special stress must be laid on the rule that the firm of a joint stock company must always contain the designation "Joint stock company".

In order to establish a joint stock company according to Danish law all that is needed is, that at least two persons agree to establish such a company and that they do not by their proceedings lead third persons to believe that one or more shareholders are personally liable.

The share capital may be quite a small amount, may be distributed in any manner, may be paid up in any form, and need not even have been paid up by any member at all.

Only in so far as life assurance business is concerned, Act No. 72 of 29 March 1904 lays down the rule, that such business must only be carried on by joint stock companies or mutual associations which have been authorised for this purpose by the Ministry of the Interior. Also joint stock companies doing business as savings banks are, according to Act No. 64 of 28 May 1880 § 2, to a certain extent kept under supervision. It must be admitted that when certain joint stock companies have applied for public authorisation, they have only done so in order to obtain certain advantages, as for instance with regard to stamps, guarantee of interest or a right to charge higher interest than that permitted for mortgages of real estate.

If a joint stock company desires to carry on operations which require a license, this must be obtained by the company in question.

The especially characteristic principal rules which obtain with regard to joint stock companies and other "anonymous" companies, are the following: 1. The company presents itself at least formally as having rights and duties. The company acquires property and assumes liabilities only by means of the body constituted for this purpose (the directors). Only this body can exercise the rights of the company and demand their recognition; — 2. The liabilities incurred by the company cannot be enforced against the members as such, and the members are not personally liable for settlement of such liabilities; — 3. On the other hand, the company's property is liable for the company's liabilities, amongst which must be counted claims that the company has against its own members; and this property is principally liable only for the company's liabilities, and thus individual shareholders or their private creditors cannot look to it for payment until the company's creditors have been paid; — 4. The company as such can enter into transactions with its own shareholders as well as with third persons, and in general can have rights and obligations in regard to these persons; — 5. The company's existence is independent of the persons of the single members. A change in the membership therefore does not entail a change in the company.

Joint stock companies can be established both by way of "Simultaneous establishment" and by way of "Successive establishment".

In the latter case a prospectus is generally distributed and the public is invited to furnish the capital by subscriptions for shares. When a certain number of shares have been subscribed, the shareholders are as a rule convened to a general meeting, at which the establishment of the company properly so-called takes place.

Ved Aktietegningen, der antages bindende, saasnaart den har fundet Sted, uden at særlig Aksept er nødvendig, paadrager Subskribenten sig en Forpligtelse og erhverver en Ret.

Forpligtelsen gaar ud paa at indbetale det tegnede Beløb. Adskillige Punkter af Subskriptionsplanens Indhold vil dog ordentligvis være af en saadan Betydning, at Forpligtelsen til Indbetaling bortfalder, hvis de vise sig urigtige eller ikke blive virkeliggjorte. Særlig gælder dette med Hensyn til Virksomhedens almindelige Art og Omfang, Aktiekapitalens Størrelse og efter Omstændighederne Forretningens Beliggenhed og Indretning. Derimod er det af foreliggende Domme antaget, at en Beslutning om at stille Lovenes Vedtagelse, Aktiebrevens Udstedelse o. lign. i Bero indtil videre — naar Selskabets Natur og Ojemed dog ikke derved forandres — ikke fritager for at opfylde den ved Tegningen paadragne Forpligtelse; ej heller, at der er begaaet Fejlgreb ved Ledelsen af Selskabets Anliggender, eller at den indbetalte Del af Aktiekapitalen allerede maatte være tabt paa det Tidspunkt, da senere Rater indkræves.

Den Ret, der ved Tegningen erhverves, er en Ret til at blive Andelshaver i det paatænkte Selskab for det tegnede Beløb, dog at Subskribenten i Tilfælde af Overtegning maa finde sig i Reduktion i Overensstemmelse med Planen. Denne Ret kan, naar andet ikke er foreskrevet, overdrages til hvem som helst; men trods Overdragelse vedbliver Overdrageren, hvor der ikke er særlig Hjemmel for det modsatte, at hæfte personlig for det tegnede Beløbs Indbetaling.

Aktieselskabets Organisation beror paa Aktionærernes Bestemmelse. De ordentligvis paa første Generalforsamling vedtagne Statuter ville i Reglen indeholde detaillerede Regler derom. Under Manglen af herhenhørende positive Lovregler hersker der fuld Frihed til i Statutterne at fastsætte Organernes Art og Beskaffenhed saavel som Afgrænsningen af deres Kompetence indbyrdes, som man vil.

I Reglen vil der være en eller flere administrerende Direktorer og en af Aktionærer bestaaende Bestyrelse, medens den øverste Myndighed er tillagt Generalforsamlingen. Undertiden er en Del af den Myndighed, der ellers ligger hos Generalforsamlingen, henlagt til et Mellemed mellem Bestyrelsen og Generalforsamlingen (Repræsentantskab, Tilsynsraad, Kontrolkomité). Endelig vil der normalt findes fast ansatte eller aarlig valgte Revisorer.

Hvis Statutterne ikke bestemme andet, maa følgende almindelige Regler antages at gælde:

Det maa være Bestyrelsens Pligt at indkalde en Generalforsamling mindst en Gang i hver Regnskabsperiode en passende Tid efter den foregaaende Perodes Afslutning samt i øvrigt, naar der foreligger til Afgørelse et Spørgsmaal, som efter sin Beskaffenhed maa henhøre under Generalforsamlingens Afgørelse. Generalforsamlingen maa indkaldes til at møde paa Selskabets Hjemsted.

Normalt kan kun Bestyrelsen anses kompetent til at indkalde en Generalforsamling; men, hvis den forsømmer sin Pligt hertil, maa hver enkelt Aktionær ved Dom kunne faa den tvungen dertil, hvorhos det i en Dom af 1897 er antaget, at en Bestemmelse i Aktieselskabets Love om, at Generalforsamlinger kunne finde Sted efter skriftlig Begæring af et vist Antal Aktionærer, maatte berettigge de nævnte Aktionærer til, da Bestyrelsen ikke efterkom sin Pligt, selv at indkalde Generalforsamlingen.

Fremdeles maa — stadig under Forudsætning af, at Statutterne ikke bestemme andet — Majoriteten af de paa Generalforsamlingen modende Aktionærer gøre Udslaget. Hver Aktionær maa antages at have ligesaa mange Stemmer, som han har Aktier. Stemmeret maa kunne udøves gennem Fuldmægtig. Generalforsamlingen maa antages beslutningsdygtig uden Hensyn til, hvor mange eller faa der ere mødte, forudsat at den er behørig indkaldt, hvortil normalt vil høre, at Forhandlingsgenstanden er angivet i Indkaldelsen. Enhver tilstedeværende Aktionær maa kunne fordre, at der føres en Protokol over Forhandlingerne.

Er intet nærmere desangaaende bestemt i Statutterne, maa Grænserne for Bestyrelsens Myndighed drages saaledes, at den kan foretage eller lade foretage alt, hvad der hører til den almindelige Ledelse af en Virksomhed af den Art, som Selskabet er bestemt til at drive. Til Foretagelse af Handlinger af ekstraordinær Art maa derimod Generalforsamlingens Samtykke indhentes. Hertil regnes i Reglen

By the subscription of shares, which is considered as binding as soon as it has taken place, without special acceptance being necessary, the subscribers incur a liability and acquire a right.

The liability consists in the paying up of the subscribed amount. Various points of the subscription project are, however, generally of such importance that the obligation to pay becomes void if they are inaccurate or are not carried out. This especially applies to the general character and extent of the operations, to the amount of the share capital and under certain circumstances to the site and organisation of the business. On the other hand it may be inferred from judgments given that a decision having in view the temporary suspension of the adoption of the regulations, or of the issue of shares etc. — when the character and scope of the company is not altered by such postponement — does not exempt from the obligation of satisfying the liability incurred by the subscription; the same rule obtains when errors have been made in the management of the company's business or when the paid-up part of the share capital is already lost when subsequent instalments are demanded.

The right acquired by subscription is that of becoming a shareholder of the projected company for the subscribed amount; the subscriber however must, in case of an excessive subscription, consent to a proportionate reduction of his holding according to the project. This right may, when nothing else has been stipulated be transferred to anybody; but in spite of a transfer the transferring shareholder remains personally liable for the payment of the subscribed amount, if there is no special reason for assuming the contrary.

The organisation of the joint stock company depends on the decisions of the shareholders. The regulations (statutes) agreed to in prescribed manner at the first general meeting as a rule contain detailed stipulations with regard to this point. In default of positive laws on the subject, the shareholders are at full liberty to fix, as they please, in the statutes, the character and constitution of the administration as well as the limits of its competence.

As a rule there are one or more managing directors, and a board consisting of shareholders, whereas the supreme authority lies with the general meeting. Sometimes a portion of the authority which usually rests with the general meeting is delegated to an intermediary body between the board and the general meeting (board of representatives, supervising council, control committee). Finally there are auditors appointed permanently in the usual manner, or chosen every year.

If the regulations (statutes) do not contain anything to the contrary, the following general rules are supposed to obtain:

At least once during every period of account it is the duty of the board to convene a general meeting at a suitable time after the close of the preceding period, and also when other matters have to be decided on which owing to their nature must be referred for decision to the general meeting. The general meeting must be held at the place where the company is operating.

As a rule only the board is considered as being competent to convene a general meeting; but if it neglects its duty to do so, an individual shareholder can by means of a judgment compel it to convene the meeting; further a judgment pronounced in 1897 decided that a clause in the statutes of a joint stock company, according to which general meetings can take place on the written request of a certain number of shareholders, entitles the shareholders concerned to convene a general meeting in the case of default on the part of the board.

Furthermore — always under the assumption that the statutes do not contain anything to the contrary — the majority of the shareholders present at the general meeting must finally decide. Every shareholder has as many votes as he has shares. A vote can be given by means of a proxy. The general meeting is considered competent to decide a matter without regard to whether many or few shareholders are present at the meeting, provided it has been properly convened, which as a rule means that the subject for decision is mentioned in the notice convening the meeting. Every shareholder present can demand that a report shall be made of the proceedings of the meeting.

If the statutes contain no particular rules on the subject, the competence of the board is limited to undertaking or causing to be undertaken all that which appertains to the ordinary management of a business of such a kind as the company is intended to carry on. On the other hand, in order to carry out transactions of an extraordinary nature the consent of the general meeting is necessary. To these,

bl. a. Køb, Salg og Pantsætning af faste Ejendomme saavel som Optagelsen af egentlige Driftsmaal, hvorhos Bestyrelsen ikke paa egen Haand kan afslutte Rets-handler for Selskabet, i hvilke den selv er Selskabets Medkontrahent, f. Ex. bevilge sig selv Laan af Selskabets Midler o. lign.

I Tilfælde af Meningsforskel indenfor Bestyrelsen maa, hvis Statutterne ej bestemme andet, Majoriteten af den samlede Bestyrelse gøre Udslaget.

Saalænge Bestyrelse og Generalforsamling holder sig indenfor deres statut-mæssige Beføjelser, har den enkelte Aktionær, som paa Generalforsamlingen er blevet overstemt, intet andet Middel til at søge at unddrage sig Afstemningens Følger end om muligt at skille sig af med sine Aktier og derved træde ud af Selskabet. Da der nu fremdeles gjerne vil være indrømmet Generalforsamlingen Ret til paa nærmere angiven Maade at foretage Forandringer i Statutterne, bliver den enkelte Aktionærs Stilling derved end mere prisgivet Majoriteten.

Imidlertid er der visse almindelige Forudsætninger for hver Aktionærs Til-træden af Selskabet, som han selvstændig maa kunne hævde overfor Bestyrelse og Generalforsamling uden Hensyn til, hvad disse — der jo kun kan bestemme, hvad Selskabet som saadant vil foretage — have vedtaget.

Til saadanne Forudsætninger maa henregnes, at han kun vilde være interesseret i Foretagendet med sine Aktier og dertil statutmæssig knyttede Indbetalinger (Statutforandringer om yderligere Indskud kan derfor ikke forpligte ham), at han kun vilde være interesseret i et Foretagende af den fra først af angivne Art (Virksomheden kan altsaa ikke uden alle Aktionærers Samtykke forandres i væsentlig Grad), samt at han vilde behandles efter samme Regler som de andre Aktionærer (Statutterne kunne altsaa f. Ex. ikke forandres derhen, at nogle skulle have en højere Dividende end andre).

Skal der træffes Bestemmelser, som ere i Strid med slige Forudsætninger, maa dertil kræves Tiltræden fra samtlige Aktionærers Side. Træffes de uden en saadan, vil den enkelte Aktionær kunne hævde sin Ret gennem Sogsmaal mod Bestyrelsen eller Selskabet.

Der vil ligeledes kunne være Tale om Sogsmaal mod Bestyrelsen fra den enkelte Aktionærs Side, naar Selskabet har ophørt at eksistere, uden at Generalforsamlingen har givet Bestyrelsen gyldig Decharge for en stedfunden Myndighedsoverskridelse. Derimod antages det, at, saalænge Selskabet bestaar, og der kun er Tale om saadanne Handlinger fra Bestyrelsens Side, som Generalforsamlingen kan ratihabere, vil ogsaa kun denne kunne tage Bestemmelse om at drage Bestyrelsen til Ansvar.

Aktiekapitalen er i Sameje mellem samtlige Aktionærer. Den enkeltes Aktieret maa derfor opfattes som en Medejendomsret, en Andelsret. Den kan, naar andet ikke udtrykkelig er bestemt i Statutterne, frit overdrages og kan i saa Fald ogsaa være Genstand for Retsforfølgning fra vedkommende Aktionærs Kreditorers Side. Ved Overdragelse følges Reglerne om Losøre. Tinglæsning er ikke nødvendig, selv om Selskabet ejer fast Ejendom.

Skøndt Aktier, som nys anført, udtrykke noget andet og mere end en blot Fordringsret, gælder dog for Aktier de særlige Regler om Gældsbreve, forsaavidt angaar Transport, Udelukkelse af Indsigelser og Mortifikation (jvf. ndf.). Aktie-retten bortfalder ikke ved Præskription eller Præklauson.

I Forhold til Tredjemand repræsenteres et Aktieselskab normalt ved sin Bestyrelse. Ifølge Firkapitalloven (jvf. ovf. S. 33) kunne overhovedet kun Bestyrelsesmedlemmer anmeldes som signaturberettigede (enkeltvis eller kollektivt). Andre kunne kun anmeldes som Selskabets Prokurister. Herved er dog ikke udelukket, at Bestyrelsen, forsaavidt da ikke Statutterne forbyde det, kan bemyndige andre til at handle for Selskabet, men disses Legitimation hertil kan blot aldrig fremtræde gennem Handelsregistret.

Til Handelsregistret modtages ikke Anmeldelser om Begrænsninger i de Signaturberettigedes Repræsentationsbeføjelse udover, hvad der ligger i selve Anmeldelsen af Selskabets Forretnings Art; men foreligge saadanne Begrænsninger gyldig vedtagne indenfor Selskabet, og er Tredjemand i rette Tid gjort bekendt dermed, ere de bindende for ham.

as a rule, belong purchase, sale and mortgage of real estate, as well as the contracting of loans for the exploitation of the business, and the board cannot of its own authority conclude transactions for the company in which it is one of the parties, for example, grant itself loans out of the funds of the company etc.

In the case of divergent opinions within the board, the majority of the entire board decides, if the statutes contain nothing to the contrary.

As long as the board and the general meeting do not exceed the competence allotted to them in the statutes, the individual shareholder who has been out-voted at a general meeting has no other means by which he can evade the consequences of the voting than by disposing, if possible, of his shares and withdrawing from the company. Furthermore, as the right is generally conceded to the general meeting of altering the statutes in a manner which is specifically indicated, the individual shareholder's position is thereby still more at the mercy of the majority.

There are, however, certain general conditions for the entry of every shareholder into the company, conditions which he of course is entitled to maintain in opposition to the board and the general meeting without having regard to what these bodies — who can only decide what the company as such can undertake — have decided.

Amongst such conditions must be included the condition, that he shall only be interested in the enterprise to the extent of his shares and the payments to be made in respect thereof, which are fixed by the statutes (alterations in the statutes relating to further payments therefore do not apply to him); that he shall only be interested in the enterprise as it was at first planned (the operations of the company can consequently not be essentially altered without the consent of all the shareholders); and that he shall be treated according to the same rules as the other shareholders (the statutes cannot therefore be subject to alterations providing that some shareholders shall receive a higher dividend than others).

If decisions are arrived at which are contrary to such conditions, the consent of all the shareholders is necessary. If they are arrived at without such consent, the individual shareholder can vindicate his right by bringing an action against the board or the company.

There may also be a question of an action against the board brought by an individual shareholder when the company has ceased to exist, without the general meeting having given the board a sufficient discharge for exceeding its competence. On the other hand, it is considered that as long as the company exists, and the matters under discussion only concern such acts on the part of the board as the general meeting can ratify, this body will alone be in a position to decide whether the board shall be made responsible.

The share capital is the joint property of all the shareholders. The right which a share confers on a shareholder must therefore be considered the right of co-proprietorship, the right of holding a share. It may, when it is not otherwise expressly stipulated in the statutes, be freely transferred and may in such case be the object of an action brought by the creditors of the shareholder in question. In case of transfer the rules regarding movable effects are applicable. Public proclamation is not necessary, even when the company has immovable property.

Although shares, as just mentioned, signify something different from and more than an ordinary claim, the special rules concerning bonds (debentures) are applicable to shares, in so far as transfer, exclusion of defences (exceptions) and cancellation are concerned (see below). The right to a share does not become extinguished by prescription or preclusion.

As against third persons a joint stock company is normally represented by its board of directors. According to the Firms Act (see above p. 33) as a general rule only the directors can be declared as being authorised to sign (single signature or collective signature). Other persons can only be declared as proxies of the company. This, however, does not prevent the directors, in so far as the statutes do not prohibit such a course, from authorising third persons to act for the company, but their authorisation to do so can never appear in the commercial register.

The commercial register does not accept declarations as to limitations of the right to represent the company in connection with those persons who are authorised to sign the firm name, apart from what is contained in the declaration itself with regard to the character of the company's business; but if such limitations have been legally agreed on within the company, and if a third person in due time has been informed thereof they are binding on him.

Et Aktieselskabs Kreditorer kunne kun holde sig til Selskabets Formue, ikke til de enkelte Medlemmer personlig, medmindre disse da endnu ikke fuldt have indbetalt Aktiernes Paalydende.

Paa den anden Side have Aktieselskabets Kreditorer Fortrinsret til Dækning af Selskabets Formue fremfor de enkelte Aktionærers Særkreditorer.

Den store Interesse, som Tredjemand herefter har i at have Adgang til Kundskab om Selskabets Formuestatus og være betrygget mod skadelige Transaktioner fra Selskabets Side, har dog under den foreliggende Mangel paa en egentlig Aktielov kun den Beskyttelse, der ligger i Straffelovens almindelige Regler om Bedrageri. Der føres ingen særlig Kontrol med, at de til Handelsregistret gjorde Anmeldelser om Aktiekapitalens Størrelse og Indbetaling ere rigtige og udtømmende, og der haves saaledes ingen særlig Garanti for, at Aktiekapitalen nogensinde har eksisteret; og selv om den har eksisteret fra først af, haves ingen særlig Garanti for, at den ikke senere vilkaarlig er formindsket. Dog antages det almindeligt, at hvis Selskabet (d. v. s. Generalforsamlingen) skulde beslutte en Fordeling af Selskabets Midler blandt Aktionærerne paa en Tid, da Selskabets Passiver overstige dets Aktiver, eller i et saadant Omfang, at dette vilde blive Resultatet (f. Ex. ved at vedtage Fordeling af et vist Beløb som Udbytte efter et Aar, hvor der er arbejdet med Tab, skøndt Selskabets Kapital allerede er helt engageret), saa ville de Aktionærer, der modtage en saadan Andel, blive personlig forpligtede til Kreditorernes Dækning — solidarisk, hvis de have været vidende om Situationen, medens de i andet Fald kun hæfte med det modtagne Beløb.

Et Aktieselskab hæfter med Selskabsformuen for sine Organers Retsbrud paa lignende Maade og under lignende Betingelser, som den private hæfter for sine. Saaledes maa Selskabet først og fremmest være ansvarligt for enhver Handling, hvis Foretagelse Generalforsamlingen har besluttet. Men ogsaa for, hvad Bestyrelse eller underordnede Funktionærer foretage, kan Selskabet under almindelige Erstatningsbetingelser blive ansvarligt, og det, ikke blot naar saadant fremtræder som Brud paa særlige, Selskabet paahvilende Forpligtelser, men ogsaa for Retsbrud udenfor Kontraktsforhold, naar disse fremtræde som foretagne i Medfør af et for Selskabet udført Hverv. — Strafferetligt Ansvar antages ikke at kunne paalægges Selskabet, men kun de enkelte Personer som saadanne.

Om Aktieselskabets Opløsning vil der ikke være Tale, fordi de enkelte Medlemmer dø, gaa fallit, blive nymyndiggjorte osv. Derimod kan enhver Aktionær forlange Selskabet opløst, hvis der er fastsat en vis Frist for dets Varighed, og denne er udløbet, eller et vist Formaal, og dette er opnaaet, saavelsom overhovedet naar en væsentlig Forudsætning for Selskabets Stiftelse eller Existens brister.

Er Selskabet stiftet paa ubestemt Tid, kan Generalforsamlingen bestemme, at Virksomheden skal standse.

Selskabets Insolvens kan foranledige dets Kreditorer til at forlange det taget under Konkursbehandling eller Generalforsamlingen til selv at forlange Konkurs.

Nogen almindelig Forskrift om, at Selskabet skal opløses, eller at Spørgsmaalet herom skal forelægges for Generalforsamlingen, naar en vis Del af Kapitalen er gaaet tabt, findes ikke i dansk Ret.

Et Aktieselskabs Opløsning vil gerne foregaa gennem Konkurs, Likvidation eller Fusion og skal gerne anmeldes til Handelsregistret (jvf. ovf. S. 34).

I Tilfælde af Konkurs foregaa Opløsningen ved Skifteretten efter de almindelige Regler om Behandlingen af Konkursboer med de Ændringer, som følge af, at der ikke findes nogen personlig Debitor for Gælden. Heraf antages bl. a. at følge, at der ikke er Adgang til Tvangsakkord. Forpligtelsen til at meddele Oplysninger maa paahvile den hidtilværende Bestyrelse.

Indtræder ikke Konkurs, maa, hvis Statutterne ikke bestemme andet, Generalforsamlingen kunne afgøre, hvem der skal lede Likvidationen (jvf. herved Firma-lovens §§ 15 og 21, ovf. S. 37 og 34). Hvis Likvidatorerne fordele Aktiverne uden at fyldestgøre Kreditorerne, maa de være ansvarlige overfor disse; men i øvrigt findes heller ikke paa dette Punkt særlige Lovregler til Kreditorernes Beskyttelse.

The creditors of a joint stock company can only look to the capital of the company for payment, and not to the shareholders individually, unless the latter have not fully paid up the amount of their shares.

On the other hand, the creditors of a joint stock company have priority of right with regard to payment out of the company's assets over the private creditors of the various shareholders.

The great interest which third persons accordingly have in being informed of the company's financial position and in being safeguarded against prejudicial transactions on the part of the company, has however, owing to the absence at present of a definite Act concerning joint stock companies, only the protection which the Penal Code provides in its general rules regarding fraud. No special control is practised in the matter of the declarations made in the commercial register to ensure that they are correct and exhaustive concerning the extent and payment of the share capital, and there is therefore no special guarantee that the share capital ever existed; and even if it at first existed, there is no special guarantee that it has not later on been arbitrarily diminished. It is however generally recognised that if the company (i. e. the general meeting) should decide on a distribution of its funds amongst the shareholders at a time when the debts of the company exceed its assets, or to such an extent that this would be the result (for example, by deciding to distribute a certain amount as profits of a year in which there has been a loss, although the funds of the company are already engaged to the full), those shareholders who receive such dividends are personally liable to satisfy the claims of the creditors — jointly and severally if they had knowledge of the state of affairs, but otherwise only for the amounts received by them respectively.

A joint stock company is answerable to the extent of its capital for wrongful acts committed by its representative bodies in the same manner and on the same conditions as private persons are liable for theirs. The company is consequently in the first instance responsible for every act decided on by the general meeting. But the company, on the ordinary conditions of liability, can also become responsible for what the directors or subordinate officials do, and not only when the act constitutes a breach of special obligations binding on the company, but also in the case of wrongful acts unconnected with contract, when such acts are done in the course of carrying on the business of the company. — The Penal Code is not supposed to be applicable to the company, but only to individual persons as such.

The question of the dissolution of a joint stock company cannot arise in consequence of its individual members dying, becoming bankrupt or being declared incompetent to manage their own affairs etc. On the other hand, any shareholder can demand the dissolution of the company if its duration has been limited to a certain period, and this has expired, or if a certain stipulated object has been achieved, and similarly when a condition essential to the company's establishment and existence fails.

If the company has been established for an indefinite period, the general meeting can decide that its operations shall cease.

The insolvency of the company justifies its creditors in demanding that it shall be made bankrupt, or the general meeting itself can demand it.

There is not in Danish law any general rule as to the dissolution of joint stock companies, or the submission of such a question to the general meeting if a certain part of the capital has been lost.

The dissolution of a joint stock company as a rule takes place by way of bankruptcy, liquidation or amalgamation, and is generally declared in the commercial register (see above p. 34).

In the case of bankruptcy the dissolution takes place in the Bankruptcy Court according to the rules for the treatment of bankruptcy estates, subject to the alterations resulting from the fact that there is no personal debtor liable for the debts. One of the consequences of this is that a composition cannot be obtained. The obligation to give information is incumbent on the directors in office at the time.

If bankruptcy does not occur the general meeting, if the statutes do not provide anything to the contrary, can decide who is to conduct the liquidation (see to this effect the Firms Act §§ 15 and 21, above p. 37 and 34). If the liquidators distribute the assets without satisfying the creditors they are responsible to the latter, but the law does not in this respect provide any special protection for the creditors.



Generalforsamlingen maa ogsaa kunne beslutte, at Oplosningen iværksættes af Skifteretten (jvf. Skiftelov 30 Nov. 1874, § 82).

Til Fusion, d. v. s. Selskabets Sammensmeltning med et andet, kræves, naar ikke Statutterne bestemme andet, enstemmig Vedtagelse af samtlige Deltagere i det eller de opløste Selskaber, hvis de Paagældende gennem Fusionen skulle blive Aktionærer i det nye Selskab. Hvad derimod angaar Selskaber, hvis Aktionærer som Følge af Fusionen skulle have deres Aktiers Beløb kontant udbetalte, eller Selskaber, der ikke selv skulle opløses ved Fusionen og heller ikke ved at optage et andet i sig kunne siges at undergaa en væsentlig Forandring, maa Beslutningen vistnok kunne tages af Generalforsamlingen.

En egentlig Sammenblanding af de to Selskabers Aktiver bør ikke finde Sted, for det eller de opløste Selskabers Kreditorer have faaet Fyldestgørelse eller givet Samtykke til Fusionen. Bliver ved Fusionen den Masse, hvorefter Kreditorerne skulde have Dækning, ude af Stand til at dække deres Krav, blive Medlemmerne ansvarlige i Overensstemmelse med den ovf. S. 52 angivne Regel.

#### Exkurs om udenlandske Aktieselskaber.

Danske Lovregler af almindelig Karakter angaaende udenlandske Aktieselskaber findes ikke. Fremhæves maa dog, at ifølge Fimaloven vil til de danske Handelsregistre kun kunne anmeldes Selskaber, der enten have deres hele Virksomhed her i Landet eller dog have en under særskilt Bestyrelse staaende Forretningsafdeling (Filial) her i Landet, jvf. Lovens § 16 (ovf. S. 32).

Nogen Adgang for udenlandske Aktieselskaber som saadanne til at erhverve Borgerskab eksisterer næppe. Men har det udenlandske Aktieselskab en Filial her i Landet, og denne staar under Bestyrelse af en Mand, der fyldestgør Betingelserne for selv at erhverve Borgerskab (jvf. ovf. S. 25), vil denne efter Omstændighederne kunne drive Virksomheden paa et af ham personlig erhvervet Borgerskab. — Som særlige Regler af Betydning for udenlandske Aktieselskaber maa derhos her nævnes Reglerne angaaende Rederi og Reglerne angaaende Livsforsikring.

I Solovens § 1 hedder det nemlig, at, for at et Skib, der tilhører et Aktieselskab, kan sejle under dansk Flag, maa Selskabets Bestyrelse have sit Sæde i den danske Stat og bestaa af Aktieejere, som enten have dansk Indfødsret og ikke ere blevne Statsborgere i fremmed Stat, eller som ere og i mindst fem Aar have været bosiddende i den danske Stat. Denne Betingelse er ved Skibsregistreringsloven af 1 Apr. 1892 § 1 skærpet derhen, at et Skib kun kan registreres som dansk, naar den bestyrende Reder, eller, naar der er flere Bestyrelsesmedlemmer, da samtlige disse ere bosiddende her i Landet. Heri er der dog igen ved Lov Nr. 10 af 4 Febr. 1898 § 2 gjort den Lempelse, at Justitsministeren kan tillade Registrering her af Aktieselskabers Skibe, naar blot Flertallet af Selskabets Bestyrelsesmedlemmer ere bosatte her i Riget.

Om udenlandske Livsforsikringsselskaber indeholdes en Række Regler i Lov Nr. 72 af 29 Marts 1904 om Livsforsikringsvirksomhed. (se ndf. S. 163.)

For udenlandske Aktieselskabers Adgang til at erhverve Grundejendom her i Landet er ingen særlige begrænsende Regler opstillede.

Af saadanne Ejendomme maa Selskaberne svare Skat ligesom enhver anden Ejer (jvf. Lov Nr. 103 af 15 Maj 1903 om Ejendomsskyld og Lov Nr. 85 af samme Dato, Afd. B om kommunal Ejendomsskyld), hvortil komme forskellige andre kommunale Ejendomsskatte.

Om udenlandske Aktieselskabers Skattepligt i øvrigt gælder i Forhold til Staten Reglerne i Lov Nr. 104 af 15 Maj 1903. Det foreskrives i dennes § 2 Nr. 5, jvf. Nr. 4, at Aktie- og Kommanditaktieselskaber, som ikke have Hjemsted her i Landet, blive pligtige at svare Indkomstskat, naar de her i Landet eje fast Ejendom eller Tiende eller have Del i saadan Ejendom eller nyde Indtægter af samme eller udøve eller ere Deltagere i nogen Næring eller Virksomhed her i Landet. Udenlandske Selskabers herværende Befuldmægtigede ere medansvarlige for Skattebidraget.



The general meeting is also in a position to decide that dissolution shall be effected by the Court for the Division of Inheritances and Bankrupts' Estates (see Act on Division of Property of 30th Nov. 1874, § 82).

To effect an amalgamation, i. e. the company's amalgamation with another company, the unanimous consent of the participants of the dissolved companies is required, when the statutes do not provide otherwise, if by virtue of the amalgamation the interested persons are to become shareholders of the new company. On the other hand the general meeting is permitted to give decisions with regard to companies the shareholders of which as a consequence of the amalgamation have to be paid the amount of their shares in cash, or companies which have not themselves to be dissolved on account of the amalgamation, and which cannot be said by absorbing another company to undergo an essential change.

An actual merging of the shares of two companies should not take place until the creditors of the dissolved companies have been satisfied, or have consented to the amalgamation. If through the amalgamation the amount out of which the creditors are to be paid is insufficient to cover their claims, the members become liable according to the rules mentioned on p. 52.

#### Excursus on foreign joint stock companies.

There are no general provisions in Danish law concerning foreign joint stock companies. It must, however, be pointed out that, according to the Firms Act, only such companies can be declared in the Danish trade registers as either have all their business done in this country, or at any rate have a branch supervised by a special board of directors; cf. § 16 of the Act (see above p. 32).

Foreign joint stock companies as such have no right to obtain a license. But if a foreign joint stock company has a branch in this country, the manager of which is a man who himself fulfils the conditions necessary for obtaining a license (see above p. 25), he will, according to circumstances, be in a position to carry on the business by virtue of a license obtained for himself. — As special rules of importance bearing on foreign joint stock companies, there must also be mentioned here the rules concerning shipowners and those applicable to life assurance.

The Maritime Law in § 1 says in effect, that in order that a vessel belonging to a joint stock company can sail under the Danish flag, the board of directors of the company must have its residence within the State of Denmark, and consist of shareholders who either have a Danish native's right without having become naturalised in a foreign State, or have been for at least five years resident within the State of Denmark. This condition by the Act of 1st April 1892 § 1 concerning the registration of ships has been made more rigorous in so far that a ship can only be registered as a Danish vessel when the managing owner, or, in case there are several directors, all the members of the board, are resident in this country. However, with regard to this point Act No. 10 of 4th Feb. 1898 (§ 2) provides a modification to the effect that the Minister of Justice can permit the registration here of ships belonging to joint stock companies, when only the majority of its directors are resident in this Kingdom.

Concerning foreign life assurance companies a series of rules are prescribed by Act No. 72 of 29th March 1904 affecting life assurance operations (see below p. 163).

With regard to the right of foreign joint stock companies to acquire real estate in this country there are no special restrictions.

In respect of such real estate companies must pay taxes like any other proprietor (see Act No. 103 of 15th May 1903 concerning land taxes and Act No. 85 of the same date, section B concerning municipal land taxes [rates], to which have been added several other municipal land taxes [rates]).

Moreover, with regard to the obligation of foreign joint stock companies to pay taxes to the State, the rules of Act No. 104 of 15 May 1903 are applicable. § 2 provides in No. 5 (see No. 4) that joint stock companies and limited partnerships with share capital non-resident in this country are liable to pay income tax when they are the owners in this country of landed property or tithe, or have shares in such property, or enjoy the revenue thereof, or exercise or are participants in any trade or exploitation in this country. The authorised representatives of foreign companies resident here are responsible for the payment of taxes.

Skatten svares ifølge § 8, sidste Stykke, med 2 pCt. af det skattepligtige Beløb. Angaaende Beregningen, se § 4 in fine, jvf. § 2 Nr. 4, hvoraf fremgaar, at Selskabets Indtægt i Udlandet ej medregnes.

Ifølge § 10 ere derhos udenlandske Selskaber, som her i Landet eje Formue eller Formuerettigheder, pligtige at svare Formueskat (0,6 pro mille, jvf. § 1), saaledes at herved kun den Formue tages i Betragtning, hvorfra de i § 2 Nr. 4 nævnte Indtægter hidrører (d. v. s. Indtægter af fast Ejendom, Næring eller Virksomhed her i Landet).

Om Skattepligten overfor Kommunen handler Lov Nr. 85 af 15 Maj 1903, hvis § 16 bestemmer, at Selskaber, der ere hjemmehørende i Udlandet, men her i Landet besidde fast Ejendom eller have Værksted, Fabrik, Udsalgslokale, Beværtningslokale eller Forretningskontor, eller have særskilt Bestyrelse eller befuldmægtiget Agent, skulle aarlig i Kommuneskat svare 3 pCt. af deres her i Landet opnaaede Nettoindtægt.

Om Aktieselskaber og andre Selskaber med begrænset Ansvar, som have deres Sæde paa Steder, hvor Danske ikke ere undergivne Landets Jurisdiktion, bestemmer Lov (Nr. 36) af 15 Febr. 1895, at de af Udenrigsministeren kunne anerkendes som danske Selskaber, naar og saalænge som samtlige Medlemmer af Selskabets Bestyrelse ere danske eller under dansk Beskyttelse staaende Personer, og de fyldestgøre visse andre i bemeldte Lov nærmere angivne Betingelser.

Et saaledes som dansk anerkendt Selskab skal gore Firmaanmeldelse til Staden Kjøbenhavns Handelsregister i Overensstemmelse med den danske Firmalovs Regler, ligesom Selskabet i det Hele underkastes nævnte Lovs Bestemmelser; derhos komme dansk Lovgivnings Regler om danske Konsulers Doms- og Øvrighedsmyndighed paa Steder, hvor Danske ikke ere undergivne Landets Jurisdiktion (se Lov Nr. 35 af 15 Febr. 1895) i et og alt til Anvendelse paa et saadant Selskab.

#### **d) Andre Selskaber med begrænset Ansvar.**

Til Selskaber med begrænset Ansvar henregner Firmaloven indenfor sit Omraade ikke blot Aktieselskaber, men ogsaa alle Selskaber med vexlende Medlemstal eller vexlende Kapital, uden Hensyn til, om Medlemmerne ere fuldt ansvarlige eller ej. Anmeldelsespligtige ere saadanne Selskaber dog kun, forsaavidt de drive Haandværk, Fabrikdrift eller Handel i ovenangivne Forstand (jvf. S. 35—36).

Om saadanne „kooperative Selskaber“ indeholder i øvrigt dansk Lovgivning ingen almindelige Regler, hvorimod der om flere vigtige Arter findes særlige Lovregler.

I saa Henseende maa først nævnes Kreditforeningerne, d. v. s. Foreninger, af hvilke man bliver Medlem, ikke ved at gore Indskud, men ved at modtage Laan, sædvanlig mod Pantessikkerhed i Laantagernes faste Ejendomme. Laanene udbetales i Reglen i de af Foreningen udstedte rentebærende Obligationer („Kasseobligationer“), der ere uopsigelige fra Kreditorernes Side, men amortiseres af Foreningen i samme Forhold, hvori Medlemmernes Gæld afdrages.

I og for sig kan saadan Kreditforening stiftes uden nogen Autorisation fra Statens Side; men da navnlig den gældende Stempellovgivning lagde væsentlige Hindringer i Vejen for, at en saadan Forenings Kasseobligationer kunde cirkulere let mellem Mand og Mand, gav en Lov af 20 Juni 1850 Indenrigsministeriet Bemyndigelse til at meddele Kreditforeninger forskellige Begunstigelser paa Betingelse af, at de fyldestgjorde visse i Loven nærmere angivne Forskrifter og lod deres Statuter stadfæste af Ministeriet. Hovedbegunstigelsen er Tilladelse til at udstede Kasseobligationer uden Brug af Stempel og at lade dem lyde paa Ihændehaveren saavel som til stempelfrit at lade dem transportere paa Navn eller paa Ihændehaver, hvorimod Debtors Hovedobligation skal bære det sædvanlige Stempel. Som andre Begunstigelser maa nævnes lettere Adgang end den sædvanlige til Udlæg i de pantsatte Ejendomme, Ret til uden Bevilling at tage højere Rente end 4 pCt. samt i Almindelighed, at Obligationerne kunne benyttes til deri at anbringe Umyndiges og offentlige Stiftelsers Midler.

Taxes according to the last section of § 8, are payable at the rate of 2 per cent. of the amount liable to assessment. Concerning the assessment, see end of § 4 and cf. § 2 No. 4, from which it becomes evident that the revenue which a company has abroad is not included.

Furthermore, according to § 10 foreign companies owning property or rights of property in this country are liable to pay the property tax (06 per cent, see § 1), however only on that part of the property from which the income mentioned in § 2 No. 4 originates (i. e. income from real estate, trade or exploitation in this country).

Act No. 85 of 15 May 1903 deals with municipal rates, § 16 providing that foreign companies owning landed property in this country, or having a workshop, factory, shop, dining rooms or business office, or having a special board of management or an authorised representative, shall every year pay to the municipality 3 per cent. of their net revenue obtained in this country.

Concerning joint stock companies and other associations with limited liability operating at places where Danes are not subject to the jurisdiction of the country, the Act (No. 36) of 15th Feb. 1895 provides that they can be recognised as being Danish companies by the Secretary of State for Foreign Affairs when and so long as all the members of the board of directors are Danes or under Danish Protection, and they satisfy certain other conditions the particulars of which are enumerated in the Act mentioned.

Consequently a company recognised as being Danish must make a declaration in the commercial register of the city of Copenhagen according to the rules of the Danish Firms Act, and the company is in general subject to the provisions of the aforesaid Act; furthermore, the provisions of the Danish laws regarding the authority and judicial competence of Danish consuls in places where Danes are not subject to the jurisdiction of the country (see Act No. 35 of 15th Feb. 1895) are applicable in their entirety to such a company.

#### **d) Other associations with limited liability.**

According to the Firms Act not only joint stock companies but also associations the members or capital of which vary, are associations with limited liability within the limits of this Act, without having regard to whether their members are fully responsible or not. Compulsory declaration, however, is incumbent on such associations only in so far as they carry on a handicraft, factory or trade as above defined (see pp. 35—36).

Concerning such "co-operative associations" Danish legislation provides no general rules, whereas with regard to several important kinds of them it makes special provisions.

In this respect the credit associations must in the first instance be mentioned, i. e. associations of which a person does not become a member by making a deposit, but by receiving loans, generally by mortgaging his landed property as security. The loans are generally effected by means of bonds issued by the association bearing interest ("Cash bonds"), which are not redeemable at the instance of the creditors, but are discharged by the association in the same proportion as the members' debts are paid off. There is nothing to prevent such credit associations being established without the authorisation of the State; but as the Stamp Acts now in force certainly to a great extent prevented the easy circulation of the cash bonds of such associations an Act of 20th June 1850 provided that the Minister of the Interior should be authorised to favour the credit associations in various respects on condition that they fulfilled certain provisions, particulars of which are enumerated in the Act, and have their statutes confirmed by the Ministry. The principal favour is that they are allowed to issue cash bonds free of stamp duty and to issue them to bearer, as well as to let them be changed free of stamp duty for nominative bonds or bonds to bearer, as the case may be, whereas the principal obligation of the debtor is liable to the ordinary stamp duty. Amongst other favours must be mentioned a greater facility than is usually allowed to take mortgaged property as security, a right to charge without authorisation a higher rate of interest than 4 per cent, and in general that the bonds can be used for investment of the monies of minors and of public institutions.

Ved Lov af 19 Febr. 1861 er det imidlertid fastsat, at de nævnte Begunstigelser fremtidig kun kunne gives ved særlige Love (en Mængde saadanne ere derefter givne), jvf. endvidere Lov 24 Marts 1875 samt Lov Nr. 59 af 24 Apr. 1896, hvorved Indenrigsministeren bemyndiges til at stadfæste visse Ændringer i bestaaende Kreditforeningers Statutter, derunder angaaende uamortisable Laan.

For to Kreditforeninger for mindre Landejendomme („Husmandskreditforeningerne“, Lov Nr. 65 af 28 Maj 1880 med Tillægslove) har Staten overtaget Rentegaranti og visse direkte Tilskud.

Til de i Loven af 1850 fastsatte Betingelser, som Kreditforeninger maatte fyldestgøre, horer navnlig, at samtlige Medlemmer foruden at hæfte for det af dem selv modtagne Laan hæfte solidarisk med de af dem pantsatte Ejendommers Taxationsværdi eller en vis Del deraf for alle af Foreningen indgaaede Forpligtelser. Ved Loven af 1861 er dog hjemlet, at Kreditforeningerne kunne være inddelte i Afdelinger (eller Serier), der ikke hæfte for hinanden indbyrdes.

Til Forandring i stadfæstede Statuter kræves Indenrigsministeriets Samtykke.

Disse Foreninger skulle og kunne ikke anmeldes til Handelsregistret. Næringsadkomst kræves ikke.

Medens det i Kreditforeninger, som ovf. angivet, er dissers Pantdebitorer, der ere de stemmeberettigede Interessenter (dog at det i Statutterne for nogle Kreditforeninger er bestemt, at ogsaa Ejerne af Foreningens Kasseobligationer, altsaa Foreningens Kreditorer, have en vis Ret til at møde og stemme paa Generalforsamlingerne) forholder det sig anderledes med Laanekasser o. lign., hvor der ved Indskud er dannet et Fond, hvoraf Udlaan gores. De stemmeberettigede Interessenter ere her Ejerne af de for Indskudene udstedte Kasseobligationer. Hertil horer Kreditkassen for Husejere i Kjøbenhavn, der fra gammel Tid har offentlig Autorisation. (Derimod er Kreditkassen for Landejendomme i Ostifterne i Virkeligheden en Kreditforening). Nogen Lov om Laanekasser findes ikke, undtagen forsaavidt Laanekassen virker som „Sparekasse“.

Sparekasser ere satte under offentlig Tilsyn ved Lov Nr. 64 af 28 Maj 1880 om Spare- og Laanekasser, jvf. Tillægslov Nr. 65 af 7 Apr. 1899. Paa den anden Side er der af det Offentlige indrommet en Række Sparekasser og Banker, der drive Sparekassevirksomhed, Stempelbegunstigelser. Sparekasser ere ifølge Firma-loven anmeldelsespligtige.

Enhver Sygekasse har Ret til at faa offentlig Anerkendelse og en dermed forbunden Støtte af det offentlige, naar den fyldestgør visse nærmere angivne Betingelser. De herhenhørende Regler indeholdes i Lov Nr. 85 af 12 Apr. 1892 om anerkendte Sygekasser.

Om Tilsyn med Begravelseskasser indeholdes Regler i Lov Nr. 55 af 1 Apr. 1905.

Dansk Lovgivning indeholder ingen almindelige Forskrifter om Forsikring overhovedet. Derimod findes der en Del særlige Love om forskellige Arter af Forsikring.

Om Søforsikring indeholdes saaledes en Del Regler i Soloven af 1 Apr. 1892 (jvf. Soretten).

Om Livsforsikringsvirksomhed bestemmer Lov Nr. 72 af 29 Marts 1904, at den — foruden af Statens Anstalt for Livsforsikring — kun maa drives af Aktieselskaber og af Selskaber, grundede paa Medlemmernes gensidige Ansvar, og først efter at vedkommende Selskab har erhvervet Indenrigsministeriets Tilladelse til at træde i Virksomhed. Gennem et Forsikringsraad fores der Tilsyn med saadanne tilladte Selskaber. (Se i øvrigt ndf. S. 163.) De for nævnte Statsanstalt for Livsforsikring gældende Lovregler indeholdes i Lov af 18 Juni 1870, Lov Nr. 78 af 1 Apr. 1893, Lov Nr. 47 af 26 Marts 1898, Lov Nr. 45 af 29 Marts 1904 og Lov Nr. 76 af 30 Marts 1906.

Brandforsikringsvirksomhed drives dels af forskellige ældre Selskaber, der fra først af have været monopoliserede og have bevaret visse Begunstigelser, dels af nyere Selskaber. For „Kjøbenhavns Brandforsikring“, oprettet 1731, maa mærkes Lov 15 Maj 1868 § 44, der ophæver Forsikringstvangen; for „Den almindelige

The Act of 19th Feb. 1861, however, provides that the above-mentioned favours can in future be granted only by special Acts (of which many have since been passed); see also Act of 24th March 1875 and Act No. 59 of 24 April 1896, which authorise the Minister of the Interior to confirm certain alterations in the statutes of credit associations now operating, amongst them being those concerned with non-redeemable loans.

In favour of two credit associations for small tenants, "The Crofters' Credit Associations", Act No. 65 of 28th May 1880 with supplementary Acts, the State has granted a guarantee for the interest and certain payments in cash.

Amongst the conditions prescribed by the Act of 1850, which the credit associations must fulfil, should be mentioned that providing that all the members, besides being liable for the loans received by them, are jointly liable for all the liabilities contracted by the association on the estimated value of the landed property mortgaged by them, or on a certain part of such value. The Act of 1861, however, provides that credit associations may be classified in sections (or series) which cannot be made liable one for the other reciprocally.

The consent of the Ministry of the Interior is required for alterations of statutes which have already been confirmed.

These associations need not and may not be declared in the commercial register. A license is not required.

Whereas in credit associations, as above mentioned, the members having the right to vote are the mortgage debtors of such associations (the statutes of some credit associations, however, provide that also the owners of the cash bonds of the association, i. e. the creditors of the association, have a certain right to meet and vote at the general meeting), matters are differently ruled in the case of loan banks etc., where by means of deposits a fund has been established out of which loans are granted. The members having a right to vote are here the owners of the cash bonds which have been issued against the deposits. To this category belongs the House Owners' Credit Bank in Copenhagen, which has long enjoyed State authorisation. (On the other hand, the Credit Bank for landed property in the island districts is in reality a credit association.) There is no Act concerning loan banks, except in so far as the loan banks operate as "Savings Banks".

The savings banks are subject to public supervision according to Act No. 64 of 28th May 1880 concerning Savings and Loan Banks; see supplementary Act No. 65 of 7th April 1899. On the other hand, the State has granted to a series of savings banks, and other banks operating as savings banks, favour in respect of stamp duties. Savings banks are, according to the Firms Act, compelled to register.

Friendly societies have a right to obtain public recognition and a grant from the Exchequer in this connection, when they fulfil certain conditions the particulars of which are enumerated. The rules to this effect are contained in Act. No. 85 of 12th April 1892 concerning recognised friendly societies.

The rules concerning the supervision of burial associations are contained in Act No. 55 of 1st April 1905.

There are no common rules bearing on insurance in general in Danish law. On the other hand, there are some special Acts in respect of various kinds of insurance.

The Maritime Law of 1st April 1892, for example, contains a series of rules concerning marine insurance (see the Maritime Law).

With regard to the life assurance business Act No. 72 of 29th March 1904 provides that — apart from the State Institution for life assurance — it must only be carried on by joint stock companies and such associations as are based on the mutual responsibility of members, and not till the association in question has obtained the permission of the Minister of the Interior to start its operations. An Insurance Council supervises such authorised associations (see to this effect below p. 163). The legal rules now in force in respect of the above-mentioned State Institution for life assurance are contained in the Act of 18 June 1870, Act No. 78 of 1st April 1893; Act No. 47 of the 26th March 1898, Act No. 45 of 29th March 1904, and Act No. 76 of 30th March 1906.

The fire insurance business is done partly by various old companies which originally enjoyed a monopoly in this line and have conserved certain privileges, partly by new companies. In connection with "The Fire Insurance of Copenhagen", established 1731, the Act of 15th May 1868 § 44 should be noted, which

Brandforsikring for Kobstadbygninger i Danmark“, oprettet 1761, maa mærkes Lov 14 Maj 1870 og for „Den almindelige Brandforsikring for Landbygninger“, oprettet 1792, Lov 23 April 1870. Ved Lov Nr. 47 af 12 Apr. 1889, jvf. Lov Nr. 51 af 13 Apr. 1894, er bestemt, at andre Brandforsikringsforeninger for Landbygninger kunne opnaa lignende Begunstigelser, naar de underkaste sig Justitsministeriets Tilsyn og i deres Vedtægter eller Statuter fyldestgøre visse Betingelser.

Lov Nr. 4 af 7 Jan. 1898 paalægger Arbejdsgiverne i visse Virksomheder at holde deres Arbejdere forsikrede mod Ulykkestilfælde og giver Adgang til at faa Forsikringsselskaber med dette Formaal anerkendte af Indenrigsministeriet. Denne Lovs §§ 5, 16 og 17 ere ændrede ved Lov Nr. 114 af 15 Maj 1903. — Lov Nr. 71 af 3 Apr. 1900 indeholder Regler om danske Fiskeres Forsikring i Ulykkestilfælde og en Lov af 1 Apr. 1905 Regler om Søfolks Forsikring mod Følger af Ulykkestilfælde i Søfartsvirksomhed. — Lov. Nr. 151 af 27 Maj 1908 indeholder Regler om tvungen Forsikring mod Følger af Ulykkestilfælde i Landbrug, Skovbrug, Havebrug m. m.

Lov Nr. 88 af 9 Apr. 1907 indeholder Regler om anerkendte Arbejdsloshedkasser.

Om Produktionsforeninger — af hvilke særlig de i Landbrugets Tjeneste staaende saakaldte Andelsselskaber (Andelsmejerier, Andelsslagterier o. lign.) i den nyere Tid spille en stor Rolle, findes endnu ingen særlige Lovregler.

Om Forbrugsforeninger hedder det i Loven af 23 Maj 1873 § 2, at enhver saadan Forening „der herefter danner sig, er underkastet Lovgivningens almindelige Bestemmelser om Handel, naar Foreningens Virksomhed er af en saadan Beskaffenhed, at den maa betragtes som Næringsdrift. — Forbrugsforeninger, der efter Foranstaaende ikke anse sig pligtige til at erhverve Borgerskab eller Næringsbevis, skulle, forinden de begynde deres Virksomhed, meddele Ovrigheden Oplysning om deres Love eller Vedtægter, samt om, af hvilke Personer Medlemmerne bestaa. Saadanne Oplysninger er Ovrigheden derhos til enhver Tid berettiget til at fordre sig meddelte for at kunne paase Lovligheden af Forbrugsforeningernes Virksomhed.“

For at en Forbrugsforenings Virksomhed ikke skal anses som Næringsdrift, kræves det. 1. at Varerne kun uddeles til Foreningens egne Medlemmer; — 2. at Varerne ere indkøbte for fælles Regning, hvilket Administrationen kun vil anse dem for at være, naar Medlemmerne ere solidarisk ansvarlige for Foreningens Forpligtelser og — 3. at Foreningens Overskud tilfalder dens egne Medlemmer.

Foreninger, der ikke fyldestgøre disse Betingelser, ere altsaa undergivne Lovgivningens almindelige Bestemmelser i Henseende til Borgerskab eller Næringsbevis, Afstandsbestemmelser, Handelsbøger, Firmaanmeldelse osv.

Lov 2 Juli 1870 § 4 indeholder den særlige Regel, at enhver Forbrugsforening uden Undtagelse, der forsyner sine Medlemmer med Brændevin, er pligtig at lase Næringsbevis og svare Brændevinsafgift.

### III. Handelsforretninger.

Da der, som tidligere omtalt, overhovedet ikke findes nogen dansk Handelslovbog og derhos ikke findes nogen almindelig Kodifikation af dansk Obligationsret siden 1683, er det ikke muligt at give en Fremstilling af dansk Rets Regler om Handelsforretninger paa anden Maade end ved først at fremstille de indenfor dansk Formueret almindelig anerkendte Hovedregler og derefter fremstille de paa Ræsonnementer fra Forholdets Natur, Kutymer og specielle Love byggede Regler, der ere af særlig Betydning for Handelsforretninger. Dette sidste vil her saavidt muligt blive gjort paa den Maade, at den tyske Handelslovbogs 3dje Bog følges, idet det Punkt for Punkt søges angivet, hvorvidt Regler, svarende til de der opstillede, kunne antages at gælde eller ikke at gælde her i Landet.

abolished *compulsory* insurance; in connection with "The general Fire Insurance for buildings in Danish towns" established 1761, the Act of 14th May 1870 must be noted, and in regard to "The general Fire Insurance for buildings in the rural districts", established 1792, the Act of 23th April 1870. Act No. 47 of 12th April 1889, see Act No. 51 of 13th April 1894, provides that other fire insurance companies insuring buildings in the rural districts may obtain similar privileges when they submit to the supervision of the Ministry of Justice, and their regulations and statutes satisfy certain conditions.

Act No. 4 of 7th Jan. 1898 makes it incumbent on employers in certain trades to insure their workmen against accidents, and provides that insurance companies having this object in view shall be recognised by the Ministry of the Interior. §§ 5, 16 and 17 of this Act have been modified by Act No. 114 of 15th May 1903. Act No. 71 of 3rd April 1900 contains rules concerning the insurance of Danish fishermen against accidents, and an Act of 1st April 1905 provides rules concerning the insurance of seamen against accidents in maritime life. — Act No. 151 of 27th May 1908 provides rules concerning compulsory insurance against accidents in agriculture, forestry and gardening etc.

Act No. 88 of 9th April 1907 provides rules regarding recognised unemployment bureaux.

Concerning productive associations — of which especially the so-called co-operative societies in agriculture (co-operative dairies, co-operative abattoirs etc.) have of late years played a prominent part — the law does not at present provide any special rules.

Concerning co-operative societies § 2 of the Act of 23rd May 1873 provides that every such society which shall henceforth be established shall be subject to the general provisions of the law with regard to commerce when the operations of the society are of such a character as to be considered a trade. — Co-operative societies which according to the preceding rules have no obligation to acquire a license or a trading certificate must, before starting their operations, acquaint the Authority with their statutes and regulations, and also give information to the Authority with respect to their members. — Furthermore the Authority is entitled at all times to demand such information in order to be in a position to determine the legality of the operations of the co-operative societies.

In order that the operations of a co-operative society shall not be considered as a trade, it is required: 1. That its goods shall be distributed only to the society's own members; — 2. That the goods shall have been purchased jointly, which the Administration will only consider as being the case when the members are jointly responsible for the society's liabilities, and — 3. That the profits of the society are distributed amongst its own members.

The societies which do not fulfil these conditions are therefore subject to the ordinary provisions of the law with regard to license, trading certificates, regulations as to distance, commercial books, registration of firms etc.

The Act of 2nd July 1870 § 4 contains the special rule that every co-operative society, without exception, which provides its members with brandy must obtain a trading certificate and pay the duty on brandy.

### III. Commercial Operations.

For the reason that there is, as has been previously said, no Danish commercial code, and as moreover since 1683 there has been no general codification of the Danish law with regard to obligations, it is not possible to give an exposition of the rules of Danish law as to commercial operations otherwise than by stating first, the generally recognised main rules of Danish property law; and, secondly, the rules derived from reasoning according to the nature of the circumstances, customs and special Acts, rules which have an important bearing on commercial operations. This exposition will here as far as possible be made in accordance with the third Book of the German Commercial Code, in such a manner as to indicate in detail in what degree the rules corresponding to those of that Code can be considered applicable in this country.

### a) Hovedregler indenfor dansk Obligationsret.

Enhver er pligtig at holde det Løfte, som han har givet. Løftets bindende Kraft er ikke betinget af nogensomhelst bestemt Form. Om Løftet er skriftligt eller mundtligt eller udtrykt gennem den Paagældendes Optræden uden Anvendelse af Ord, er ligegyldigt. Men selvfølgelig maa dets Existens i Benægtelsestilfælde kunne bevises.

Hovedreglen i saa Henseende er, at man, naar Løftet ikke foreligger i skriftlig Form, maa føre to fuldgyltige Vidner paa, at det er afgivet, eller tilvejebringe et Indiciebevis af tilsvarende Kraft. Lykkes det ikke at føre fuldt Bevis ad denne Vej, men dog noget („halvt“) Bevis for Løftets Afgivelse, kan man forlange Modpartens Frifindelse gjort afhængig af, at han med Ed fralægger sig at have afgivet det.

Kan man fremlægge et med Modpartens Navn underskrevet Papir, hvori Løftet indeholdes, vil Modpartens Nægtelse af at vedkende sig dette ligeledes kun blive taget for gyldig, hvis han tor vedstaa Nægtelsen med sin Ed.

Om den til Førelse af Handelsbøger knyttede Bevisfordel, se ovf. S. 39.

Gaar et Løfte ud paa en ensidig Forpligtelse, er denne uden videre stiftet, naar Løftet ved den Lovendes Foranstaltning (personlig, ved Brev, Bud eller Fuldmægtig) er naaet til den, der skal have Rettigheden. Akcept kan ikke kræves. Men selvfølgelig kan Modparten afslaa Tilbudet.

Gaar Løftet ud paa at skabe et gensidigt Obligationsforhold — d. v. s. at den lovende forpligter sig paa Betingelse af, at den anden Part forpligter sig til en vis Vederlagsydelse —, er Løftet vel ligeledes forbindende, saasnart det er naaet til den anden Part; men denne maa da erklære, hvorvidt han vil opfylde Betingelsen.

Føres Forhandlingen mellem nærværende Parter eller pr. Telefon, maa Akcepterklæringen i Mangel af anden Aftale afgives strax. Ved Kontraktafslutning mellem fraværende Parter er derimod Tilbyderen bunden ved sit Tilbud i saa lang Tid, som han har indrommet den anden til at afgive Svar, eller, naar han ingen Frist har sat, i saa lang Tid, som der under normale Forhold kræves, for at et med sædvanemæssig Hurtighed afsendt Svar kan naa tilbage. Tilbyderen er i saa Henseende berettiget til at gaa ud fra, at hans Tilbud er ankommet uden Forsinkelse. Kommer nu bekræftende Svar i rette Tid, er Kontrakten dermed afsluttet. Kommer det derimod efter Tiden, er Tilbyderen ikke længere pligtig at staa ved sit Tilbud. Vil han imidlertid ikke staa ved det, og maa Forsinkelsen antages at være Akcept-Afsenderen ubekendt, maa Modtageren deraf strax meddele denne, at Kontrakten ikke er kommet i Stand; ellers er den anden Part berettiget til at betragte Sagen som gaaet i Orden.

Er det Svar, der indgaar paa et Tilbud, ikke ganske overensstemmende med dette, men ledsaget af Betingelser eller Indskrænkninger, kan det ikke virke som Akcept, men er efter Omstændighederne at betragte som et nyt Tilbud.

Virkningen af Tilbud- eller Akcepterklæringer kan udelukkes ved en Tilbagekaldelseserklæring, naar denne kommer Modparten i Hænde for eller samtidig med den første Erklæring, men ellers ikke.

En Betingelse for, at et Løfte er forbindende, er, at den, der afgiver det, har den dertil fornødne Myndighed (jvf. om Myndighedsreglerne ovf. S. 24). Ellers binder Løftet ham ikke.

Et heller opstaar nogen Forpligtelse, naar Løftemodtageren ser eller burde kunne se, at Løftegiveren ved Løftets Afgivelse befinder sig i en Tilstand, der i Øjeblikket udelukker Fornuftens Brug (f. Ex. i stærk Bernelse), eller at Erklæringen ikke udtrykker den Erklærendes virkelige Mening (men f. Ex. er afgivet i Spøg eller skyldes en Fortalelse eller en Fejlskrift).

Fremdeles ere Løfter, fremkaldte ved ulovlig Tvang (derunder ulovlige Trusler) uforbindende, og, naar Løftegiveren strax gør Anmeldelse om saadant til Politiet, skabes derved en Formodning for, at der virkelig foreligger Tvang.

At Løftegiveren kun har ladet sig bestemme til at afgive Løftet, fordi han gik ud fra, at en vis Omstændighed forholdt sig anderledes, end den i Virkeligheden



### a) Principal rules of the Danish law of obligations.

It is the duty of every person to keep the promise which he has made. The legal force of the promise is not subject to any definite form. It is immaterial whether the promise has been made in writing or verbally or expressed through the interested person's behaviour without the use of words. But of course in the event of denial it must be proved that the promise has been made.

The main rule on this point is that, when the promise is not evidenced by writing, two reliable witnesses ought to be produced to give sufficient evidence as to whether it has been made, or presumptive evidence of similar value be procured. If no sufficient evidence is forthcoming in this manner, but some ("semi") evidence proving that the promise has been made, the discharge of the opponent can be made dependent on his denying on oath that he made such promise.

If a document, signed by the opponent and containing the promise, can be produced, the refusal of the opponent to recognise this document as his, will in a similar manner only be considered as valid when he is ready to confirm such refusal by oath.

Concerning the advantage with regard to evidence in connection with the keeping of commercial books, see above p. 39.

If a promise implies an obligation on the one side only (unilateral) the obligation is established as soon as the promise by the efforts of its originator (personally or by means of a letter, messenger or agent) has reached the other party. Acceptance cannot be insisted upon. But of course the other person can reject the offer.

If the promise aims at establishing a relation based on mutual obligation — i. e. the person who promises pledges himself on condition that the other binds himself by a certain counterpromise — the promise is equally binding, once it reaches the other person; but the latter must in this case declare whether he will fulfil the stipulated condition.

If the negotiations are carried on between two persons who are both present, or by telephone, a declaration of acceptance must be given at once in default of other agreement. On the other hand, when a contract is negotiated between absent parties the person making the offer is bound by his offer for the period allowed to the other person for an answer, or if no period has been fixed, for as long as is normally required for an answer to be returned with ordinary promptitude. The person making the offer is in this respect entitled to assume that his offer has arrived without delay. If an answer in the affirmative arrives in time, the contract is concluded. If on the contrary it arrives after the expiration of the period allowed, the person making the offer is no longer compelled to abide by it. However, if he is unwilling to maintain it, and there is reason to suppose that the delay is unknown to the sender of the acceptance, the person who receives the latter must at once inform the other that the contract has not been concluded; otherwise the accepting person is entitled to consider the agreement concluded.

If the answer sent to an offer is not quite in accordance with such offer, but is accompanied by conditions or limitations, it cannot have the effect of an acceptance, but must, according to circumstances, be considered as a fresh offer.

The effect of declarations of offer or acceptance can be made void by means of a declaration of revocation when this reaches the other person before or simultaneously with the former declaration, but otherwise not.

A necessary condition for a promise to be binding is that the person who makes it should have the required capacity (see with regard to the rules of capacity, above p. 24). Otherwise, his promise is not binding on him.

Nor does any obligation arise when the person accepting sees or ought to see that the person making the promise is at the time of making it in a state which prevents him from exercising his reason (for example, in a state of extreme intoxication) or when the declaration does not express what the declarant really means (but, for instance, has been made by way of a joke or is due to a slip of the tongue or pen).

Furthermore, promises extorted by means of unlawful duress (which includes illegal threats) do not create an obligation, and when the person making the promise at once acquaints the police with the occurrence, he thereby creates the presumption that he has in reality been subject to coercion.

If the promisor has only been induced to make the promise because he assumed that a certain circumstance was different from what it is in reality (error), or that

gor (Vildfarelse), eller at en vis Omstændighed vilde indtræffe, som i Virkeligheden ikke indtræffer (bristende Forudsætning), berøver ikke Løftet dets Gyldighed, medmindre Forholdet netop er det, at Medkontrahenten har set eller ved Anvendelse af sædvanlig Omtanke maatte have set, at Løftet var ment som betinget af vedkommende Omstændigheds Foreliggen eller Indtræden, saaledes at det maa betragtes som ganske tilfældigt, at dette ikke udtrykkelig er udtalt af Løftegiveren.

Et Løfte om noget i Opfyldelsesøjeblikket umuligt kan selvfølgelig ikke forlanges opfyldt efter dets Ordlyd. Hvorvidt Kreditor i Stedet kan forlange en Pengegodtgørelse, beror paa, om Umuligheden hidrører fra et Forhold fra Debtors Side, for hvilket han maa staa Kreditor til Ansvar, eller beror paa Omstændigheder, hvis Ikke-Indtræden han maa betragtes som havende garanteret (jvf. nærmere ndf. om Erstatning i Kontraktsforhold).

Løfter, som ere „imod Lov eller Ærbarhed“ ere ikke forpligtende.

Nogen almindelig Regel om, at der til en Kontrakts Gyldighed kræves en vis Forholdsmæssighed mellem Ydelserne findes ikke, og af de tidligere Aagerregler er ifølge Lov af 6 April 1855 ikke andet tilbage end Forbud mod at tage mere end 4 pCt. i aarlig Rente af Laan, der ere sikrede ved Pant i fast Ejendom. Herved maa derhos mærkes, at Loven giver Indenrigsministeriet Bemyndigelse til at meddele Bevilling til af saadanne Laan at tage indtil 6 pCt., og at saadanne Bevillinger i Praxis aldrig nægtes.

Ifølge Stempeloven af 19 Febr. 1861 (jvf. Lov 21 Marts 1874 og Bkg. 1 Dec. 1874) skulle Dokumenter, der angaa Penge eller Penges Værdi, i Almindelighed stemples. Undladelse heraf medfører Bodeansvar (i Almindelighed det 5-dobbelte af det manglende Stempels Beløb), men er uden Betydning for Retshandelns Gyldighed; et ustempet Dokument er altid ligesaa forbindende som et stempet.

Naar et Løfte om Pengebetaling er afgivet af flere i Forening, og Aftalen ikke specielt afgør, om den Enkelte kun skal hæfte for en Anpart eller for det Hele, er det i dansk Retspraxis som almindelig Regel antaget, at Fordringshaveren af hver Enkelt kan fordre det fulde Beløb, med andre Ord, at Pengeløftet fra Flere i Forening i Almindelighed skaber umiddelbart solidarisk Pligt.

Naar en Debitor enten slet ikke eller ikke paa behørig Maade opfylder sin kontraktmæssige Forpligtelse overfor Kreditor, opstaar Spørgsmaalet om hans Erstatningspligt.

Herom bemærkes følgende:

Da den obligatoriske Forpligtelse hyppigst gaar ud paa, at Debitor skal udfolde en vis positiv Virksomhed i Kreditors Interesse, ville Undladelser, der udenfor Kontraktsforhold i Reglen ikke ere Retsbrud, i Kontraktsforhold ofte faa Karakter heraf.

Derhos vil i Kontraktsforhold Erstatningspligt jævnlig indtræde, selv om det stedfundne Kontraktsbrud er Debitor utilregneligt (saaledes navnlig ved Mora, Mangler ved generelle Ydelser og Vanhjemmel).

Om Hovedtilfældene af Ikke-Opfyldelse skal følgende bemærkes:

Viser det sig, at det fra først af har været Løftegiveren (Debitor) umuligt at opfylde sit Løfte, maa han være pligtig at give Kreditor Erstatning, medmindre han da kan godtgøre, at intet i saa Henseende kan lægges ham til Last, eller det i hvert Fald efter Forholdets hele Beskaffenhed laa lige saa nær for Kreditor som for Debitor at være opmærksom paa de Omstændigheder, der gør Ydelsen fra først af umulig.

Er Umulighed for Løftets Opfyldelse indtraadt efter dets Afgivelse, er Debitor erstatningspligtig, medmindre han beviser, at Umuligheden ikke beror paa Mangel af pligtig Omhu og Agtpaagivenhed fra hans Side. Ligeledes er han selvfølgelig erstatningspligtig, naar han har paataget sig en ubetinget Garanti for Ydelsens Levering. Særlig maa fremhæves, at en Debitor normalt formodes at have garanteret mod enhver Hindring, der alene beror paa manglende økonomisk Evne hos ham.

a certain circumstance would arise which in fact does not arise (failing condition), the validity of the promise is not thereby impaired, unless the position is this: that the promisee understood, or by using ordinary forethought ought to have understood, that the promise was intended to be conditional on the existence or occurrence of the circumstance in question, that is to say, that it must be considered as quite accidental that this has not been expressly mentioned by the promisor.

It cannot be demanded that a promise shall be literally executed, the object of which is impossible of realisation at the time when it is to be carried into effect. Whether the promisee in place of the fulfilment of the promise can demand a compensation in money depends on whether the impossibility of carrying the promise into effect is the result of a circumstance imputed to the promisor for which he is responsible as regards the promisee, or of circumstances the non-occurrence of which he must be considered as having guaranteed (see further to this effect below, concerning damages in matters of contract).

Promises "contrary to law or good morals" are not binding.

There is no general rule requiring for the validity of a contract that the obligations of the parties should to a certain extent be proportionate, and of the previous rules relating to usury according to the Act of the 6th April 1855 nothing else remains but the prohibition against taking more than 4 per cent. annual interest on loans secured by a mortgage of landed property. It must furthermore in this connection be noted that the Act authorises the Ministry of the Interior to permit that not exceeding 6 per cent. may be taken on such loans, and that such permissions are never withheld in practice.

According to the Stamps Act of 19th February 1861 (see Act of 21st March 1874 and Circular of 1st Dec. 1874) documents concerning money or money's worth must as a rule be stamped. Omissions in this respect involve the payment of fines (generally five times the amount of the duty for the omitted stamping) but in no way impair the validity of the legal transaction; an unstamped document is always just as binding as a stamped one.

When a promise of money payment has been made by several persons together, and the agreement does not distinctly determine whether each promisor shall be liable for part or the whole amount, it is in Danish legal practice generally assumed that the creditor can ask for the whole amount from each, in other words, that a promise to pay money made by several persons together as a rule creates a direct joint and several liability.

When a promisor does not at all, or not in the manner agreed on, perform the obligation stipulated according to the contract with regard to the promisee, the question of paying damages to the latter arises.

On this subject the following should be observed: As the obligation of a contract most frequently has in view that the promisor shall perform a certain positive act in favour of the promisee, omissions which outside matters of contract are not, generally, violations of legal rights, will, in matters of contract, frequently assume the character of such a violation.

In matters of contract the obligation of paying damages also usually arises even if the promisor is not to blame for the breach of contract which has taken place (especially in the case of responsibility for delay, defaults in general promises and defective title).

With regard to the principal cases of non-fulfilment of obligations the following remarks should be made:

If it is proved that from the beginning it was impossible for the promisor (debtor) to fulfil it, he is bound to give compensation to the creditor (promisee) unless he can prove that he was not to blame at all in the matter, or that at any rate according to the nature of the circumstances it as much concerned the creditor as the debtor to pay attention to the circumstances which from the beginning rendered the performance impossible.

If the impossibility of carrying out the promise did not arise until after it was made, the debtor is liable to pay compensation, unless he can prove that the impossibility is not a consequence of lack of due care and attention on his part. He is of course also liable to pay compensation if he unconditionally guaranteed that performance should be effected. It must especially be pointed out that a debtor as a rule is presumed to have guaranteed against any hindrance arising only from lack of economic capacity on his part.

Har Debitor ikke præsteret i rette Tid, skondt der ikke foreligger nogen egentlig Umulighed, taler man om Mora (Forhaling), og man plejer for dette Tilfælde at opstille som Hovedregel, at Debitor er ansvarlig uden Hensyn til, om Moraen er ham tilregnelig eller ej. Videre antages det, at, naar først Mora er indtraadt, bliver Debitor ansvarlig for enhver derefter indtrædende Umulighed, selv om denne er af en saadan Beskaffenhed, at den ellers vilde frigøre ham (jvf. i øvr. angaaende Moravirkningerne nærmere ndf.).

Om Mangler ved Ydelser og Vanhjemmel henvises til Afsnittet om Køb og Salg.

Naar en Debitor ikke i rette Tid erlægger et skyldigt Pengebeløb, bestemmes Erstatningsrenten (Morarenten) efter en Lov af 6 April 1855. Det hedder i denne Lovs § 3:

„Naar en Debitor ikke i rette Tid betaler sin Gæld, bliver han pligtig til, fra den Dag, Kreditor paa lovlig Maade søger sin Ret, og indtil Betalingen erlægges, at svare 1 pCt. højere Rente end den, der er hjemlet ved Lovgivningen eller ved Overenskomst mellem Parterne eller ved den blandt Kobmænd stedfindende Skik og Brug.“

Morarenten begynder altsaa ikke at løbe fra Fordringens Forfaldstid, men først fra den Dag, Kreditor paa lovlig Maade søger sin Ret (nemlig ved Klage til Forligskommissionen, eller — hvor Forligsmægling undtagelsesvis kan undlades — ved Stævning til Retten eller ved Anmeldelse i Debtors Bo); jvf. dog nu herved Lov om Køb af 6 Apr. 1906 § 38 (se ndf.).

Den Rente, der er „hjemlet ved Lovgivningen“, er 4 pCt. Selv om den i Retsforholdet betingede Rente er under 4 pCt., antages Kreditor dog, ligesaavel som naar ingen Rente er vedtaget, at kunne kræve 5 pCt. i Morarente. I visse Forhold, f. Ex. ved Vexler, findes der særlige Forskrifter om Morarentens Beregning.

Parterne kunne gyldig vedtage, at Morarenten skal løbe fra et tidligere Tidspunkt eller beregnes paa en anden Maade end den i Loven foreskrevne. Et Til-sagn om „skadesløs Betaling“ hjemler ifølge Reskr. 18 Novbr. 1718 og Retspraxis Renter og Rentes Renter fra Forfaldsdagen samt skadesløse Inkassationsomkostninger.

Er derimod Intet vedtaget om Moraansvaret, faar Kreditor ikke mere end den ovenangivne lovbestemte Morarente, og det selv om han noksaa meget kan bevise, at han ved Pengenes Udeblivelse har lidt et langt større Tab.

Drejer det sig derimod om Erstatningsberegning i Tilfælde, hvor den ikke behørig erlagte Ydelse er andet end Penge, haves ingen saadan almindelig Lovregel. Hovedsynspunktet for Erstatningens Fastsættelse er da, at Debitor skal svare Kreditor Godtgørelse for det Tab, som ved Udeblivelsen af den skyldige Præstation er paaført ham.

Der kan imidlertid i saa Henseende være Spørgsmaal enten om: 1. Ret for Kreditor til vedblivende at forlange selve den omkontraherede Ydelse — hvis da dens Erlæggelse stadig er mulig — med Tillæg af en Godtgørelse for det Tab, som ved Forsinkelsen er paaført ham („Forhalingsinteressen“), eller om — 2. Ret for ham til i Stedet for selve den omkontraherede Ydelse at forlange en Erstatning, der stiller ham, som om Kontrakten var behørig opfyldt („Opfyldelsesinteressen“), i hvilken Henseende man i Praxis gjerne vil lægge til Grund den Skade, som Kreditor oplyser faktisk at have lidt ved Kontraktens ikke-behørig Opfyldelse, undtagen forsaavidt den fremtræder som Resultat af særlige, uberegnelige Omstændigheder eller skyldes Kreditors eget Forhold. Endelig kan der i gensidige Obligationsforhold være Tale om — 3. Ret for den ikke misligholdende Part til at hæve Kontrakten og eventuelt i Forbindelse dermed forlange en Erstatning, der stiller ham, som om Kontrakten overhovedet ikke var indgaaet („den negative Kontraktsinteresse“).

If the promisor has not carried out his obligation in due time, although there is no real impossibility properly speaking, it is a case of delay (*Mora*), and as to this eventuality the principal rule usually laid down is that the promisor is liable without regard to whether he has caused the delay or not. It is furthermore assumed that when the delay has occurred, the promisor becomes responsible for any impossibility arising out of it, even if this is of such a nature as would otherwise discharge him (see, further, concerning the consequences of delay, below).

Concerning defective performance and defective title reference should be made to the section relating to purchase and sale.

When a debtor does not pay at the right time an amount of money which is due, the amount of damages (interest for the delay) is fixed according to the Act of 6th April 1855. § 3 of this Act contains the following provision:

“When a debtor does not pay his debt in due time, he becomes liable from the day on which the creditor pursues his right in a legal way, and until payment has been made, to pay 1 per cent. more interest than that authorised by law, or according to agreement between the parties, or according to the customs obtaining between merchants.”

Consequently the interest for the delay is not calculated from the day on which the claim should be paid, but only from the day on which the creditor in a legal manner prosecutes his claim (i. e. by means of a complaint to the Compromise Committee, or — where negotiations with a view to conciliation can exceptionally be avoided — by means of a summons before a tribunal or a notification to the debtor's estate in bankruptcy); refer however in this connection to the Act of 6th April 1906 § 38 on purchase (see below).

The interest which is “authorised by law” is 4 per cent. Even if the interest stipulated in the transaction is below 4 per cent. the creditor is nevertheless supposed, as well as when no interest has been stipulated, to be entitled to claim 5 per cent. interest for the delay. In certain transactions, for example those relating to bills of exchange, special rules obtain with regard to the manner in which the interest for the delay shall be calculated.

The contracting parties can legally agree that the interest for the delay shall date from an earlier period or be calculated in another manner than that provided by the law. A promise of “payment without damage” according to the Rescript of 18th Nov. 1718 and legal practice entitles the promisee to interest and compound interest from the day payment is due, together with reimbursement of collection expenses.

If, on the other hand, nothing has been stipulated as to responsibility for delay, the creditor does not obtain more than the interest provided by law for the delay as above mentioned, and this is the case, however conclusively he may prove that he has sustained a much greater loss owing to the non-arrival of the money.

If however it is a question of assessing damages in cases where the obligation which has not been duly performed is something other than payment of money no such general legal rule is available. The principal rule whereby the damages are regulated is then that the promisor shall indemnify the promisee against the loss which the latter has suffered owing to the non-performance of what was due to him.

As to this point the question may arise either with regard to: 1. The promisee's right always to claim the actual performance of the obligation agreed upon — if its performance is still possible — with an additional compensation for the loss which the delay has caused him (“interest for delay”), or with regard to: — 2. The promisee's right to demand, instead of the performance of the obligation agreed upon itself, a compensation which places him in a position similar to that in which he would have been if the contract had been duly carried out (“advantage of fulfilment”); in this respect the customary practice is to use as a basis the loss which the promisee states as a fact has been suffered by him through the incomplete fulfilment of the contract, except in the case where the damage arises out of special unforeseen circumstances, or is brought about by the promisee himself. Finally, in contracts where mutual obligations are concerned there may be a question respecting: — 3. A right for the person who does not break the contract to rescind it and eventually in connection with this to claim a compensation which places him in the same position as if the contract had not been concluded at all (“the negative advantage of contracts”).

For at Kreditor kan være berettiget til i Overensstemmelse med det under 2. angivne at kræve Pengeerstatning i Stedet for selve den omkontraherede Ydelse, maa Forudsætningen være, at det af Kontrakten fremgaar, at han lagde afgørende Vægt paa at erholde Ydelsen i rette Tid<sup>1)</sup> eller dog forinden et nu forløbet Tidsrum, eller at i øvrigt hans Interesse i at erholde selve denne er ophørt paa Grund af Moraen. Denne Beføjelse, der jo i Virkeligheden gaar ud paa at fastholde Kontrakten, kun uden Naturalopfyldelse, betegnes ikke desto mindre i Almindelighed som en Beføjelse til at „hæve Kontrakten og kræve Erstatning“.

For at en Part kan være berettiget til at hæve Kontrakten i egentlig Forstand (den under 3. nævnte Beføjelse), altsaa forlange at blive stillet, som om Kontrakten slet ikke var indgaaet, maa der foreligge, hvad man i Reglen benævner en væsentlig Misligholdelse. Om saadan Misligholdelse er Modparten tilregnelig eller ej, maa i denne Forbindelse ordentligvis være ligegyldigt; kun maa bemærkes, at Ingen til sin Frigørelse kan paaberaabe sig Medkontrahentens Ikke-Opfyldelse, naar denne skyldes hans eget Forhold.

Den, som ser sin Fordel ved og derfor vælger en egentlig Ophævelse af Kontrakten, maa ogsaa tage Konsekvensen deraf og kan ikke uden videre forlange Godtgørelse for de særlige Udgifter, f. Ex. til Foranstaltninger til Varens Modtagelse, som han har afholdt. Kun hvis saadant Tab kan siges at være forårsaget ved retsstridigt, forsætligt eller uagtsomt Forhold fra Modpartens Side, f. Ex. Forømmelse af i rette Tid at meddele, at det, der skal leveres, ikke vil komme, kan der være Spørgsmaal om Erstatning derfor.

Erstatningspligt udenfor Kontraktsforhold opstaar, naar Nogen ved en tilregnelig, retsstridig Handling forårsager en Anden en Skade, der var en forudselig Følge af Handlingen, og som kan ansættes i Penge.

Som den Handlende tilregnelig vil man ansee Handlingen, ikke blot naar den er foretaget med det Forsæt at skade, men ogsaa naar den er uagtsom i den Forstand, at den skyldes en Tilsidesættelse af den Agtpaagivenhed, som en i det paa-gældende Forhold erfaren, fornuftig og hæderlig Mand vilde udvise i den paa-gældende Situation.

Ansættelig i Penge er selvfølgelig først og fremmest Krænkelser af egentlige Formuerettigheder, men desuden hjemler Lovgivningen undertiden Godtgørelseskrav for Krænkelser af forskellige andre Retsgoder end Formuerettigheder, saaledes for „Tort og Kreditspilde“, ved Legemsskade for „Lidelser, Ulempe, Lyde og Vansir“, ved Ærefornærmelser og Sædelighedsforbrydelser for forvoldt „Odelæggelse eller Forstyrrelse af den Krænkedes Stilling og Forhold“ o. s. v.

Ved egentlige Formuekrænkelser bestemmes Erstatningens Størrelse som Regel efter den bevislig lidte Skade, saavel den direkte som den indirekte, herunder ogsaa tabt Vinding, f. Ex. Næringstab. Fremgaar Skadens Størrelse ikke umiddelbart af det oplyste, bliver Erstatningen gerne at fastsætte ved uvillige Mænds eller ved Rettens eget Skøn. I Tilfælde, hvor end ikke det for saadan Vurdering nødvendige Grundlag kan skaffes, kan det efter Omstændighederne tilstedes den Skadelidende selv at fastsætte Skadens Størrelse ved sin Ed eller, hvor han ikke kan aflægge saadan Ed (f. Ex. hvor ikke han, men Skadeforvolderen har den fornødne Kundskab om Skaden), at fordre en tilsvarende Ed paalagt Skadeforvolderen under Tvangsmulkt.

Det gælder som almindelig Regel i dansk Ret, at Fordringer kunne transporteres, og en udtrykkelig Vedtagelse (i skriftlige Dokumenter f. Ex. ved Tilføjelsen „eller Ordre“) er derfor unødvendig.

Undtagelse fra Transportabiliteten foreligger kun, naar det er udtrykkelig vedtaget (f. Ex. ved Klausulen „ikke til Ordre“) eller stiltiende forudsat mellem Kreditor og Debitor, at Fordringen ikke skal kunne borttransporteres, samt naar Fordringen paa den Maade er knyttet til Kreditors Person, at Indsættelse af en anden Kreditor vilde medføre en væsentlig Forandring af Debtors Stilling saaledes som f. Ex. ved Fordringen efter en Tyendekontrakt.

<sup>1)</sup> Jvf. om Fixforretninger ndf.

In order that the promisee according to No. 2 may be entitled to claim compensation in money instead of performance of the obligation, it is necessary that the contract should imply that he laid a decisive stress on obtaining the performance of the obligation at the stipulated time<sup>1)</sup>, or at any rate within a space of time which has expired, or that his interest in obtaining actual performance has ceased to exist owing to the delay. This right, which in reality tends to the maintenance of the contract, but without actual performance in kind, is nevertheless generally characterised as a right to "rescind the contract and claim compensation".

In order that a person may be entitled to actually rescind the contract (the right mentioned under No. 3), and consequently to demand that he shall be placed in a position similar to that in which he would have found himself if the contract had not been concluded at all, there must be what is generally called an essential violation. Whether such violation has been caused by the other party or not, must in this connection generally be considered as immaterial; it must, however, be observed that no one can demand that his own discharge shall be based on the non-performance of the other contractor, if the non-performance is due to his own act.

The person who sees his advantage in the actual rescission of the contract, and who therefore chooses this course, must also take upon himself the consequences of such rescission and cannot without reasonable grounds claim compensation for the special expenses which he has incurred, for example, on account of arrangements with a view to effect the reception of goods. Only when such loss can be said to be due to illegal, intentional or careless conduct on the part of the other party, for example to an omission to send information in due time that an object which ought to have been delivered will not arrive, can the question of compensation arise.

Liability to pay damages irrespective of relations of contract arises when a person through an unlawful act imputable to him, causes damage to another person which could be foreseen as a consequence arising out of the act, and which can be estimated in money.

The act will be imputed to the person in question not only when it has been performed with the object of causing damage, but also when it is a careless act in the sense that it gives proof of a neglect of that attention which in the special circumstances an experienced, reasonable and honourable man would manifest in the situation in question.

In money can of course in the first instance be estimated a violation of actual rights of property, but the law sometimes also provides compensation for violation of other legal rights than these, for example for "injury to and loss of credit", in the case of bodily injury for "sufferings, inconvenience, infirmities and deformities", in the case of attacks on a person's honour and offences of immorality for "destruction or disturbance caused to the offended person's position and circumstances" etc.

In the case of violations of property properly so called, the amount of damages is as a rule fixed according to the loss actually suffered, directly as well as indirectly, amongst which must be noted loss of profits, e. g. the loss of a profession. If the amount of the damage is not immediately evident from the established facts, the compensation is as a rule fixed by a decision of impartial persons or by an estimate made by the Court. In cases where not even the basis necessary for such an estimate can be procured, the injured person can, according to circumstances, be allowed to estimate the extent of the damage on oath, or where such oath cannot be taken (for example, where not he, but the person who has caused the damage has the necessary knowledge concerning the matter), to demand that a similar oath shall be taken by his opponent under penalty of a coercive fine.

It is in Danish law admitted as a general rule that claims can be assigned, and an express agreement (in written documents, for example, by the addition of "or to the order of") is therefore unnecessary.

There is no exception to the assignability except when such exception has been expressly agreed to (for example, by the clause "not to order"), or when it has been tacitly agreed between creditor and debtor that the claim in question shall not be assigned, and when the claim is dependent on the person of the creditor to such an extent that the substitution of another creditor would bring about an essential change in the debtor's position, as for instance in the case of claims arising out of servants' contracts with their employers.

<sup>1)</sup> Concerning "fixed businesses" see below.

Medens Debitor efter Hovedreglen ikke kan modsætte sig Transporten, er det paa den anden Side en Grundsætning, at Transporten — bortset fra de særlige Regler om Gældsbreve m. v. jvf. ndf. — ikke kan forringe Debitors Retsstilling. En Fordring kan f. Ex. ikke transporteres til flere med den Virkning, at Debitor nu skulde være pligtig at betale til flere paa forskellige Steder eller til forskellige Tider, naar den oprindelige Forpligtelse kun gaar ud paa at betale paa et Sted og til en Tid.

Transporten kan ske mundtlig eller skriftlig; men det sidste vil i Reglen være nødvendigt, for at Erhververen kan legitimere sig overfor Debitor.

Skriftlig Transport kan saavel tegnes paa det overdragne Dokument som udfærdiges i Form af et særskilt Dokument. I begge Tilfælde er den ordentligvis stempelpligtig efter de samme Regler som Hoveddokumentet. Det er som Følge deraf ved Stempeloven af 19 Febr. 1861 § 78 forbudt at udstede noget Bevis eller nogen Transport, hvortil stemplet Papir bør bruges, med Navn in blanco eller lydende paa Ihændehaveren. De vigtigste Undtagelser herfra ere Statsobligationer, visse Kommune-, Kreditforenings- og Bankobligationer samt Konnossementer og Checks; hvorhos Vexler kunne endosses til Ihændehaveren.

Man sonderer mellem simpel og skadesløs Transport. Ved simpel Transport indستاar Overdrageren kun for, at Fordringen er gyldig, og at Debitor ikke kan fremsætte Indsigelser imod den, men ikke for, at Debitor kan betale.

Ved skadesløs Transport derimod garanterer Overdrageren ikke blot for, at Fordringen er gyldig, men ogsaa for, at den er god. Har Erhververen forgæves søgt Fyldestgørelse hos Debitor, kan han derfor, hvor skadesløs Transport foreligger, holde sig til Overdrageren.

Særlige Regler gælde med Hensyn til Transport af saakaldte negotiable Papirer, hvilket Begreb i dansk Ret har et vidt Omfang, idet der derunder bl. a. henregnes ethvert Gædsbrev, selv om det kun lyder paa et bestemt Navn, naar der blot ikke i Gædsbrevet er tilføjet et ndtrykkeligt Forbud mod dets Overdragelse.

De i saa Henseende anerkendte Retssætninger stottes tildels paa positive Lovregler, nemlig Forordn. af 9 Febr. 1798 og nogle senere dertil sig sluttende Lovbud, men ere dog navnlig udviklede af Teori og Praxis i Tilknytning til disse Lovbuds Regler.

Forordningen. 9 Febr. 1798 lyder saaledes:

§ 1. „Ligesom det er Kreditors Pligt at levere Debitor sin Haandskrift kvitteret tilbage, naar den hele Kapital udbetales, saa bor og det originale Gædsbrev have tilstede, naar noget afbetales i Afdrag paa Kapitalen, og Kreditor være forbunden til i Skyldnerens eller hans Fuldmægtigs Overværelse baade at afskrive paa selve Brevet det, der afbetales, og tillige at meddele særskilt Kvittering derfor. Vægrer Kreditor sig ved at efterkomme dette, da bør Skyldneren (som vidnefast anbyder den Sum, der skulde afdrages) være berettiget til at holde samme tilbage, indtil Kreditor opfylder fornævnte sin Pligt, og Skyldneren fritages imidlertid for at svare Renter af den til Betaling forfaldne og tilbudne Del af Kapitalen.“

2. „Løse Kvitteringer for Afbetalinger paa et Gædsbrevs paalydende Kapital skal, naar det i Afdrag betalte ej tillige findes afskrevet paa Brevet selv, alene gælde imod den, der har udstedt samme, men ej anses gyldige imod andre, som ved Pantsættelse, Transport eller anden lovlig Adkomst maatte være blevne retmæssige Ihændehavere af en saadan Forskrivelse.“

3. „Dog maa Renters Betaling undtages fra disse Regler, og særskilte Kvitteringer derfor beholde fuldkommen Kraft, ikke alene imod Udstederen, men endog imod enhver anden, der siden maatte have faaet Haandskriften overdragen til Pant eller Ejendom.“

Af dette Lovbuds § 2 udleder man den almindelige Grundsætning, at ved Gædsbreve og ved andre Dokumenter, der kunne stilles i Klasse med saadanne („Omsætningspapirer“, „negotiable Dokumenter“), bæres Fordringen af Papiret i den Forstand, at Indsigelser, der ikke fremgaa af dette, eller senere Aftaler, der ikke ere paategnede dette, i Almindelighed ikke kunne gøres gældende overfor den godtroende Erhverver.

Som Indsigelser, der fortabes, kunne saaledes foruden Betalingsindsigelsen, nævnes Proformaindsigelsen, Indsigelser, hentede fra urigtige Forudsætninger, f. Ex. at Valuta ej er modtaget, den Indsigelse, at Gædsbrevet er fremkaldt ved Svig, eller at Fordringen er eftergivet eller afgjort ved Modregning.



Whereas a debtor according to the main rule cannot raise an objection to assignment, it is on the other hand generally recognised that assignment, apart from the special rules concerning notes of hand (letters of obligation) etc., for which see below for further details — must not be prejudicial to the debtor's legal position. A claim for example can not be transferred to several persons in such a manner that the debtor shall be liable to make payments to several persons at various places or at various periods, when the original claim stipulated for payment at one place and one time only.

Assignment may take place verbally or in writing; but the latter form is as a rule necessary in order that the assignee may justify his claim against the debtor.

An assignment in writing can either be made on the assigned document, or issued as a separate document. In either case a stamp duty must be paid according to the same rules as those obtaining with regard to the principal document. As a consequence of this the Stamps Act of 19th Feb. 1861, § 78 prohibits the issue of any proof or any assignment liable to stamp duty with the name in blank or to bearer. The most important exceptions to this rule are State bonds, certain municipal bonds, bonds issued by credit associations and banks, and also bills of lading and cheques; but bills of exchange may be indorsed to bearer.

A distinction is made between simple assignment and assignment without damage. The term simple assignment denotes that the assignor guarantees only that the claim is valid and the debtor cannot object to it, but not that the debtor can pay.

The term assignment without damage on the other hand implies that the assignor not only guarantees that the claim is valid, but also that it is good. If the assignee has in vain tried to obtain payment from the debtor, he can in the case of "an assignment without damage", look to the assignor for payment.

Special rules obtain with regard to so-called negotiable securities, a term which in Danish law is wide, as it comprises, amongst other documents, any money obligation, even if it is only issued to a certain name, provided the instrument does not contain an express prohibition against assignment.

The recognised legal rules obtaining in this respect are based partly on the provisions of positive law, as for instance the Ordinance of 9th Feb. 1798, and some later Ordinances connected therewith, but they have also been developed through theory and practice founded on the provisions of these Ordinances.

The Ordinance of 9th Feb. 1798 reads as follows:

§ 1. Just as it is a creditor's duty to return to the debtor the document receipted when the full amount has been paid, so the original instrument of obligation must be at hand when part of the sum is paid, and in the presence of the debtor or his agent the creditor must write on the document the amount which is being paid, and simultaneously give a special receipt for it. If the creditor refuses to comply with this, the debtor (who in the presence of witnesses offers to pay the amount which is due) shall be entitled to withhold the same until the creditor has fulfilled the above mentioned duty, and the debtor cannot be charged with interest on that part of the amount which he has offered in payment."

§ 2. "Loose receipts for part-payments of the capital of a letter of obligation shall, when the said payments are not also inscribed on the document itself, only be valid as against the person who has issued them but not against other persons who by pledge, assignment or other legal means have become regular holders of the transferred document."

3. "The payment of interest is however excepted from this rule, and special receipts for this consequently retain their full legal force, not only as against the person who has issued them, but even as against any other person to whom the document afterwards may have been transferred by way of pledge or ownership".

From § 2 of this Ordinance the general rule has been derived that in the case of money obligations and other documents of the same category ("commercial papers", "negotiable securities") the claim is involved in the document in the sense that defences which do not arise out of this, or later agreements which are not mentioned on the said document, generally cannot be advanced against the *bona fide* transferee."

As defences which under the said circumstances lose their legal force may, besides the defences taken against payments, be mentioned the defence of simulation, defences arising out of incorrect assumptions, for instance that value has not been received, the defence that the instrument has been issued through fraud, or that the claim has been withdrawn or settled by means of a set-off.

Derimod maa som Indsigelser, der ikke fortæbes, nævnes, at Debitor ved Underskriften ikke var myndig, at Underskriften er falsk eller Gælds brevet forfalsket, eller at Debtors Underskrift er fremkaldt ved Tvang, samt, at Fordringen er bortfalden som Følge af Mortifikation, Præskription eller Præklauson.

Da Debitor efter de heromhandlede Dokumenter ifølge ovennævnte Regel ikke kan være sikker paa at blive frigjort, medmindre Dokumentet udleveres ham i kvitteret Stand, behøver Erhververen ikke her som ellers ved Erhvervelse af Fordringer, at give Debitor Underretning om Transporten, forudsat at Erhververen sorger for enten at tage Dokumentet i sin Besiddelse eller lade det faa Paategning om hans Erhvervelse deraf.

I en Forordning af 28 Juli 1841 om Underpant i Losore ndtales det, at det „maa anses som en Følge af de gældende Loves Grundsætninger, at ingen Underpantssætning, om den end er behørig tinglæst, kan med Hensyn til Statspapirer, Aktier, Privatobligationer eller andre deslige Pengeeffekter komme i Betragtning til Skade for den, der senere paa lovlig Maade har faaet dem til haandfaaet Pant eller tilforhandlet sig samme, medmindre der er givet bemeldte Effekter en Paategning, som tydelig indeholder, at de ere indbefattede under hin Pantssætning.“

Herpaa bygges den almindelige Retssætning, at en hvilkensomhelst Rettighed, Gælds brevet vedrørende, om hvilken der ikke er givet dette Paategning, fortæbes overfor senere godtroende Erhververe af dette. Denne Sætning om ikke paategnede Rettigheders Tilintetgørelse kommer dog kun til Anvendelse til Fordel for saadanne Ihændehavere, hvis Adkomst virkelig hidrører fra en Person, der efter Gælds brets ægte Udvisende var den berettigede, men ikke til Fordel for Ihændehavere, der i god Tro have erhvervet det fra En, der kun ved en falsk Paategning har skaffet sig Legitimation som berettiget.

Alene med Hensyn til Ihændehaverpapirer, Vexler, Konnossementer og visse Oplagsbeviser gælder den Regel, at en tidligere Ejers Vindikation er ubetinget udelukket overfor Enhver, der besidder Papiret i god Tro med en i Formen lovlig Adkomst.

Af Principet om Papiret som Fordringens Bærer følger med Nødvendighed en tredje Retssætning, den nemlig, at Debitor frigøres ved Betaling i god Tro til den, der besidder Dokumentet med en i Formen lovlig Adkomst.

Debitor har jo nemlig Krav paa at frigøres ved Forfaldstid og kan efter Forordningen 9 Febr. 1798 ikke frigøres ved Betaling til den oprindelige Kreditor, naar denne ikke længer besidder Gælds brevet.

Naar Debitor saaledes frigøres ved Betaling til den formelt legitimerede Besidder af Gælds brevet, kan det paa den anden Side ogsaa gores ham til Pligt at betale til en saadan Besidder, uden at denne behøver at bevise, at alle de Transporter, hvorpaa hans Adkomst beror, i Virkeligheden ere ægte og retsgyldige. Kun hvis Debitor kan bevise eller dog skaffe en stærk Formodning for, at den, der kræver Betaling efter Gælds brevet, i Virkeligheden ikke er rette Kreditor, kan han nægte at betale.

Til „Omsætningspapirer“ „negotiable Dokumenter“ i heromhandlede Forstand maa foruden Gælds breve (d. v. s. ensidige Dokumenter, der lyde paa Betaling af Penge, derunder altsaa Obligationer, Vexler, Sparekassebøger m. v.) navnlig henregnes: Konnossementer, Udleveringssedler paa Varer, autoriserede Oplagsbeviser og lign. merkantile Dokumenter samt Aktier. Derimod vil dertil i Almindelighed ikke kunne regnes Skylderklæringer i gensidige Obligationsforhold.

De Personer, til Fordel for hvem de omtalte upaategnede Indsigelser og Rettigheder fortæbes, ere saadanne, hvis Ret over Dokumentet beror paa en Omsætningsadkomst (Overdragelse fra en tidligere Ejer); hvorimod hverken Konkurskreditorer eller Udlægshavere saaldt som Arvinger og lignende Successorer kunne gøre disse Extinktionsregler gældende til Fordel for sig.

Om Fordringsrettighedens Ophør bemærkes følgende:

For at en Debitor kan blive frigjort ved Betaling (Opfyldelse), maa Betalingen selvfølgelig normalt være erlagt til rette Vedkommende d. v. s. til Kreditor eller nogen, der er berettiget til at optræde paa dennes Vegne. Dog fremgaar det

On the other hand, as defences which do not lose their legal value must be mentioned the following: that the debtor when he signed was a minor, that the signature or the instrument is forged or that the debtor's signature is the result of coercion, or that the claim has become void owing to cancellation, prescription or preclusion.

As the debtor, where these documents are concerned, according to the rules stated cannot be sure of being discharged unless the document in question is handed over to him with the creditor's receipt, the transferee does not here, as in other cases where claims are assigned, need to inform the debtor of the assignment, provided that the transferee sees that he either takes possession of the document or by his signature on the document shows that he has acquired it.

An Ordinance of 28th July 1841 concerning mortgages of movables provides that it "must be considered as a consequence of the principles governing the laws now in force that no mortgage, even if it has been duly proclaimed in public, with regard to State paper, shares, private obligations or other similar securities, can come into consideration to the detriment of the person who shall subsequently in a lawful manner have acquired them by way of pledge or have bought them, unless the said securities bear notice which distinctly indicates that they are included in the mortgage."

On this is based the general legal rule that any right affecting the security which is not mentioned in the document itself, is lost in so far as subsequent *bona fide* transferees are concerned. This principle as to the loss of non-mentioned rights is, however, only applicable in favour of those holders whose rights are genuinely derived from persons who according to the actual tenor of the instrument are the individuals entitled, and not in favour of holders who have acquired it in good faith from a person who has only acquired the necessary right by means of a forgery.

Only with regard to securities issued to bearer, bills of exchange, bills of lading and certain storage certificates, the rule holds good that the right of a previous owner is absolutely excluded with regard to any person who *bona fide* possesses the document which he has acquired in a lawful way.

From the principle that the claim is involved in the document follows necessarily a third legal rule, viz. that the debtor is discharged when payment is made in good faith to the person who holds the document owing to a right which he has acquired in a lawful manner.

A debtor has doubtless the right to discharge his debt on the day for payment, and cannot according to the Ordinance of 9th February 1798 obtain discharge by making payment to the original creditor when the latter does not any longer hold the letter of obligation.

If the debtor thus discharges his debt by making payment to the person possessing a formal right to the instrument, he can be compelled to make payment to such a holder without the latter being obliged to prove that all the transfers on which his right is based are in reality genuine and according to law. Only in case the debtor can prove or at any rate can show good reason for assuming that the person who demands payment according to the instrument is in reality not the legitimate creditor, can he refuse to make payment.

Amongst "commercial papers" "negotiable securities" in the sense previously cited must, besides letters of obligation (i. e. unilateral instruments importing the payment of money, including bonds, bills of exchange, savings banks books, etc.), especially be mentioned: bills of lading, certificates for delivery of goods, authorised storage certificates and similar commercial documents, as well as shares. But in this category declarations of debts in connection with relations of mutual contracts are not in general included.

The persons in favour of whom the non-mentioned defences and rights are lost, are those whose claim to the document is based on a right acquired by means of transfer (transfer from a previous owner); on the other hand, bankrupt creditors or holders of pledges cannot advance these rules of extinction in their favour any more than heirs or similar successors.

Concerning the extinction of rights arising out of claims must be observed:

In order that a debtor may be discharged by payment (performance), payment must of course be made in the regular way to the right person, i. e. to the creditor or some person who is authorised to represent him. It, however, results from what

af det foran omtalte, at Debitor efter et Gældsbrief eller dermed ligestillet Dokument befries ved Betaling i god Tro til den, der besidder Dokumentet med en i Formen lovlig Adkomst, selv om denne senere maatte vise sig at være en uberettiget. Paa den anden Side maa Debitor ved Fordringer, der ikke ere knyttede til et Gældsbrief eller dermed ligestillet Dokument, kunne frigøre sig ved Betaling til den oprindelige Kreditor, saalænge han ikke har faaet nogen Underretning om Fordringens Transport.

Naar ingen anden Aftale er truffen, skulle Pengebetalinger erlægges paa Kreditors Bopæl eller Kontor. Vexler og lignende Dokumenter, der sædvanlig omsættes, maa dog af Kreditor præsenteres Skyldneren til Betaling.

Ved Køb og Salg maa i Mangel af anden Aftale Køberen indfinde sig hos Sælgeren for at modtage det Købte.

Tiden for en Forpligtelses Opfyldelse beror paa Aftalens Indhold eller Forudsætninger og eventuelt paa Handelssædvane. Alle Handelstransaktioner, hvis Opfyldelse vilde falde paa en Helligdag, afgøres efter Handelssædvane den foregaaende Søndag. Om Vexler findes dog særlige Regler.

Har en Mand af en Fejltagelse betalt noget, som han ikke skyldte, eller betalt mere, end han skyldte, vil han i Reglen kunne søge det erlagte tilbage. Dette kan han dog ikke, naar Yderens Færd har givet Modtageren Foje til at antage, at Erlæggelsen fandt Sted ifølge andre lovlige Motiver end Formening om Skyld, eller naar Yderen ved sin Erlæggelse bibringer Modtageren den befojede Antagelse, at denne havde Ret til det erlagte, hvilket sidste navnlig kan forekomme, naar Yderen fremfor Modtageren havde Adgang til Kendskab til de Omstændigheder, hvoraf det afhænger, om og hvad der skyldes.

Naar et Gældsbrief er bortkommet for Kreditor eller blevet tilintetgjort, aabner en Forordning af 7 Febr. 1823 Adgang til at faa det mortificeret. Fremgangsmaaden er ret omstændelig, idet der hos Ovrigheden maa søges Bevilling til ved Stævning, der indrykkes 3 Gange i „Statstidenden“, med 6 Maaneders Varsel at indkalde den eller dem, der maatte have Gældsbriefet i Hænde, til at møde for Retten og bevise, at deres Adkomst. Saafremt Ingen melder sig, afsiges der en Dom, hvorved Gældsbriefet kendes dødt og magtesløst. Hvis der til den bortkomne Obligation hører Rentekupons, maa disse, for at kunne mortificeres sammen med Obligationen, udtrykkelig være nævnte saavel i Bevillingen som i Stævningen og Dommen.

Denne Mortifikationsadgang kan ogsaa anvendes paa Vexler og Checks saavel som paa Statsobligationer og paa Obligationer, udstedte af offentlige Instituter, for den sidste Gruppes Vedkommende dog kun, naar Obligationen efter dens oprindelige Indhold eller efter foregaaet Transport er noteret i vedkommende Instituts Bøger som lydende paa bestemt Person, men ikke naar den er noteret som lydende paa Ihændehaven.

For visse Arter af Dokumenter (saasom Oplagsbeviser, Konnossementer, Sparekassebøger, Aktier og Livsforsikringspoliceer) gælder særlige Mortifikationsregler.

Den af en Kreditor erhvervede Mortifikation bevirker i hvert Fald, at Debitor nu ikke længere kan nægte Betaling, fordi Beviset ikke præsenteres ham i kvitteret Stand.

Mortifikationsdommen giver Kreditor samme Legitimation som Besiddelse af Gældsbeviset.

Om der maa antages at tilkomme en Mortifikationsdom Virkning ud derover er omtvistet.

Naar en Fordrings Opfyldelse til Forfaldstid støder paa Hindringer fra Kreditors Side, idet Debitor gør lovligt Tilbud, men Kreditor f. Ex. nægter at modtage det tilbudte, eller ikke er i Stand til at præstere det aftalte Vederlag eller til at give behørig Kvittering (Kreditors Mora), vil saadant kunne bevirke Debtors fuldstændige Frigørelse. Dette vil saaledes være Tilfældet, naar Kreditors Forhold

has been previously said that the debtor in the case of a letter of obligation or a similar instrument is set free by making payment *bona fide* to the person who has acquired the instrument in a formally legal manner, even if such person is subsequently proved not to be entitled to hold the instrument. On the other hand, in the case of claims which are not connected with letters of obligation or similar instruments, the debtor must be entitled to *discharge his debt* by making payment to the original creditor so long as he has not been informed of the assignment of the claim.

In default of other agreement payments in money must be made at the creditor's residence or office. Bills of exchange and similar documents which are in general negotiable must however be presented by the creditor to the debtor for payment.

In the case of a purchase, the purchaser must, when no other agreement has been made, present himself at the vendor's residence in order to receive the purchased object.

The period for the discharge of a liability depends on what the agreement contains or assumes, and eventually on what is customary in commerce. All commercial transactions which are due for performance on public holidays are according to commercial custom settled on the previous business day. There are however special rules with regard to bills of exchange.

If a person has erroneously paid money which he did not owe, or paid more than he was liable to pay, he will as a rule be entitled to claim restitution of the sum overpaid. This however cannot be done when the person who has made the payment has given the receiver the right to assume that the payment took place owing to other legal motives than the erroneous supposition of a debt which did not exist, or when the person who makes the payment at the time of payment justifies the receiver in the belief that the latter could claim the payment. The latter case may especially occur when the person who made the payment had more opportunity than the receiver to become acquainted with the circumstances on which the existence of the debt and its amount depended.

When a letter of obligation has been lost or destroyed to the detriment of the creditor, the Ordinance of 7th Feb. 1823 provides that it can be cancelled. The procedure is very complicated, as the authority must be asked to grant permission for the issue of a summons, which must be published three times in the "State Gazette", and which summons the person or those persons who may hold the instrument to appear in court within six months and prove their legitimate right. If no one puts in an appearance judgment is rendered according to which the instrument is declared null and void.

If interest coupons are attached to the lost instrument, these in order to be annulled simultaneously with the instrument, must be distinctly mentioned in the authorisation, as well as in the summons and the judgment.

This right of cancellation can also be applied to bills of exchange and cheques as well as to State bonds and to bonds issued by public institutions; in the case of the last category, however, only when the bond in accordance with its original contents or after a previous transfer has been entered in the books of the institution as issued nominatively, and not when it has been entered as issued to bearer.

To certain kinds of documents (as storage certificates, bills of lading, savings banks books, shares and life assurance policies) special cancellation rules apply.

The right of cancellation acquired by a creditor at any rate produces this result, that the debtor can no longer refuse to pay because the document is not presented to him receipted.

The cancellation judgment gives the creditor the same legal power as the possession of the instrument.

It is doubtful whether the power given by the cancellation judgment can be assumed to have any further effect.

If the payment of a claim on the day when it falls due is prevented by the creditor, the debtor, for example, offering to pay in a legal manner, but the creditor refusing to accept payment, or not being in a position to fulfil the agreed on counter-promise or give the requisite receipt (delay caused by creditor), the debtor's complete discharge may result therefrom. This is notably the case if the creditor's behaviour

maa opfattes som indeholdende en Eftergivelse, eller naar Ydelsen er af en saadan Beskaffenhed, at det vilde medføre en væsentlig Forandring i Debitors Retsstilling, om han skulde være pligtig at erlægge Ydelsen til et senere Tidspunkt end det vedtagne, f. Ex. personlige Arbejdsydelser.

Udenfor disse Tilfælde bliver Debitor vel ikke uden videre frigjort ved Kreditors Mora, men denne bevirker, at hans Forpligtelse i det Hele antager en mindre byrdefuld Karakter.

Ved Pengeskyld befries Debitor ifølge Forordningen af 9 Febr. 1798 § 1 for at betale Renter fra det Tidspunkt, da Kreditor er i Mora, og kan frigøre sig for enhver videre Forpligtelse ved at deponere Beløbet paa fuldt betryggende Maade for Kreditors Regning.

Angaar Forpligtelsen andet end Penge, kan Genstanden ligeledes deponeres paa betryggende Maade, hvis den egner sig dertil. Ellers maa Debitor vel indtil videre opbevare Tingen for Kreditor, men kan efter Omstændighederne fordre Godtgørelse herfor. Fordringerne til hans Agtpaagivenhed blive derhos nedsatte, og gaar Tingen til Grunde, eller bortkommer den uden Debitors Skyld, er han fri for Ansvar. Vedvarer Kreditors Mora, kan Debitor, efter saavidt muligt at have advaret ham, frigøre sig ved at realisere Tingen og deponere Udbyttet.

I gensidige Obligationsforhold kan Debitor kræve det vedtagne Vederlag uden Hensyn til, om hans Forpligtelse overfor Kreditor er bortfalden eller formindsket i Overensstemmelse med det nys omtalte.

Om en Parts Adgang til ensidig uden den anden Parts Samtykke at fordre Modregning (Kompensation, Likvidation) bragt til Anvendelse til fuldstændig eller delvis Afgørelse af en Gældsforpligtelse, gælde i Hovedsagen følgende Regler:

Betingelserne for Modregning ere for det første, at begge Fordringer ere forfaldne, og dernæst, at de ere ensartede (f. Ex. to Pengefordringer).

Videre fordres, naar Hovedkreditor søger Betaling ad Rettens Vej, at Debitor for at et Modkrav skal kunne tages i Betragtning, fremfører dette gennem et Kontrassogmaal. I Vexelsager (see Vexelretten) og Sager, der behandles ved So- og Handelsretten i Kjøbenhavn, kunne Modfordringer dog gores gældende til Kompensation indsigelsesvis.

Endvidere har en positiv Lovregel (Danske Lovs 5—14—6) begrænset Adgangen til at gøre Modregning gældende overfor Gældsforskrivninger, der indeholde en klar og ubetinget Gældsankendelse. Det hedder nemlig i bemeldte Lovbud:

„Imod rigtige og pure Haandskrifter bør ej omtvistet Geld eller Regnskaber at ansees; men Regnskab imod Regnskab bør at komme til Afregning.“

Reglen forstaas saaledes, at den Kreditor, der har et ikke til Betingelser knyttet Gældsbevis, kan afvise saadanne ikke likvide Modkrav, hvis Rigtighed han bestrider, hvorimod han maa finde sig i Kompensation, hvis han erkender Modkravets Rigtighed, og ligeledes hvis Modkravet er støttet paa rede og klart Gældsbevis, selv om han modsiger det.

Naar Debitor efter et Gældsbevis har underkastet sig den saakaldte „hurtige Retsfølgning“ (se S. 12) saavel som i Vexelsager, er Adgangen til at gøre Modregning gældende undergiven yderligere Indskrænkninger.

Omvendt er der overfor Konkurs- og Dødsboer hjemlet en videre Adgang til Modregning end i andre Tilfælde, jvf. Konkurslovens § 15, der ifølge Skiftelov af 30 November 1874 §§ 44, 56 og 82 bliver at anvende ogsaa ved Dødsboskifter (se Konkursretten).

Hvad Gældsbreve og andre negotiable Papirer angaar, følger det af de ovf. fremstillede Regler om disse, at Debitor ikke overfor Erhververen af et saadant Dokument kan gøre Modregningsret gældende, hidrørende fra Krav, som han har overfor Overdrageren.

Hvad derimod ikke-negotiable Fordringer angaar, er det Reglen, at Debitor derved, at han har en kompensabel Modfordring paa den oprindelige Kreditor,

may be considered as implying a remission, or if the performance is of such a kind as to essentially alter the debtor's legal position, if he should be compelled to discharge the obligation at a later date than that agreed on, for example in the case of a service rendered in person.

Except in these cases the debtor cannot be directly discharged through the creditor's delay, but this tends to impart to his liability in general a less rigorous character.

In the case of money debts the debtor, according to the Ordinance of 9th Feb. 1798 § 1, may be relieved from paying interest from the day when the creditor assumes responsibility for the delay, and he can free himself from any further liability by depositing, with all due care as to its safety, the amount to the creditor's account.

If the liability is other than the payment of money, the object can also be deposited in a safe manner if it is capable of such treatment. If not, the debtor must certainly keep the object for the creditor, but he may according to circumstances claim to be compensated for so keeping it. The attention required of him is thereby lessened, and if the object is destroyed or if it is lost through no fault on his part, he is free of liability. If the creditor's delay continues, the debtor can, after having given him full warning, discharge himself by selling the object and depositing the proceeds.

Where transactions of mutual obligations are concerned, the debtor can claim that the agreed-on obligation shall be carried out, without having regard to whether his liability with respect to the creditor has in accordance with what has just been stated above become void or been diminished.

Concerning a contracting person's right to claim for himself without the other person's consent a set-off (compensation, liquidation) so as to bring about the entire or partial extinction of a liability, the following rules in the main obtain:

For a set-off to be considered it is in the first instance necessary that both liabilities shall be due, and furthermore that they shall be of the same kind (for example two money claims).

It is furthermore requisite when the principal creditor tries to obtain payment by means of an action, that the debtor, in order that his set-off can come into consideration, should advance this by means of a counter action. In matters relating to bills of exchange (see the Bills of Exchange Law) and matters dealt with by the Maritime and Commercial Tribunal of Copenhagen, a set-off can however be advanced by way of defence.

Furthermore, a legal rule now in force (Danske Lov 5—14—6) has limited the right to advance a set-off in respect to instruments containing a clear and unconditional admission of the existence of a debt. The legal rule referred to is to the following effect:

"Against documents which are in order and have not been in any way tampered with contested debts or accounts cannot be advanced; but one account can be placed as a set-off against another account."

The rule is to be understood to the effect that the creditor who holds a note of hand which is not subject to conditions, can reject such set-offs as are not clear and the correctness of which he contests, whereas he must submit to a set-off if he recognises the exactness of the claim, and also if the claim is based on a real and clear note of hand, even if he contests it.

If the debtor in a note of hand has consented to the so-called "quick procedure" (see p. 12), as also in transactions dealing with bills of exchange, the right to advance a set-off is subject to further limitations.

On the other hand, as against estates of bankrupts and deceased persons, a wider right to advance set-offs than in other cases is available; see the Bankruptcy Act § 15, which according to the Distribution Act of 30th November 1874 §§ 44 and 82 is applicable also to deceased persons' estates (see the law relating to bankruptcy).

As regards letters of obligation and other negotiable instruments it results from the above mentioned rules that the debtor in relation to the transferee of such documents cannot avail himself of a right to advance a set-off arising out of a claim which he has against the transferor.

On the other hand, as regards non-negotiable claims, it is the rule that the debtor by acquiring a computable cross-claim against the original creditor, acquires

erhverver en Modregningsret, som ikke kan beroves ham ved, at Kreditor borttransporterer Fordringen.

Naar de to Parter staa i stadig Mellemregningsforhold eller de to overfor hinanden staaende Fordringer dog udspringe af et og samme Kontraktsforhold (ere konnexe), vil der kunne være Tale om, at de to kompensable Krav, forsaavidt de ikke støtte sig paa Gældsbev, maa anses som havende hævet hinanden allerede fra det Øjeblik, da de kom til at staa overfor hinanden, saa at der fra dette Øjeblik f. Ex. kun beregnes Renter af Saldoen.

I andre Tilfælde indtræder Kravenes gensidige Ophævelse først, naar Forlangende om Kompensation fremsættes fra en af Siderne, saa at altsaa Renter vedblive at løbe indtil dette Tidspunkt.

Med Hensyn til Fordrings Forældelse (Præskription) bestemmer Danske Lovs 5—14—4:

„Alle Gældsbeve, som ere ældre end tyve Aar, skulle være døde og magtisløse, medmindre de inden fornævnte Tid, med Skyldnerens Paaskrivelse, eller med nyt Bev, eller Creditorens Opsigelse, eller Beskikkelse, eller Tingsvidne ere fornyede.“

Reglen taler kun om Gældsbeve, men anvendes ifølge Analogi ogsaa paa alle andre Formuefordringsrettigheder uden Hensyn til deres Oprindelse og uden Hensyn til, om de ere skriftlige eller mundtlige, betingede eller ubetingede.

Forældelsesfristen løber ved kontraktmæssige Krav allerede fra Stiftelsesdagen, og denne Regel anses ufravigelig, saaledes at Forældelsen ikke udelukkes, selv om Parterne have vedtaget en Forfaldstid, der ligger længere end 20 Aar frem i Tiden eller have vedtaget, at Fordringen ikke skal kunne forældes.

Man er dog tilbøjelig til at mene, at Forældelsesfristen ved Livsforsikringer og lignende Krav først begynder at løbe fra det Tidspunkt, da Ydelsen kan fordres erlagt, og ved Erstatningskrav udenfor Kontraktsforhold først fra det Tidspunkt, da Kreditor kunde vide, imod hvem han havde Kravet.

Forældelsen afbrydes ved enhver Kendsgærning, der indtræder inden de 20 Aars Udlob og indeholder en Aerkendelse fra Debtors Side eller et Paakrav fra Kreditors Side.

En saadan Aerkendelse kan fremtræde som en Fornylsespaategning eller gennem Betaling af Renter eller Afdrag eller paa hvilkensomhelst anden Maade, naar den blot er bevislig, og det samme gælder om Paakrav, der saaledes ligesaavel kunne være udenretslige som indenretslige og overhovedet ikke ere bundne til nogen bestemt Form.

Naar Forældelsen saaledes er afbrudt, begynder en ny Forældelsesfrist at løbe fra Afbrydelsesøjeblikket.

Medens Haandpanthaveren bevarer sin Ret til at søge Fyldestgørelse af Pantet, selv om det personlige Krav mod Debitor er forældet, er det omtvistet, hvorvidt det samme gælder om en Underpanthaver.

Naar Hovedforpligtelsen bortfalder ved Forældelse, bortfalder med det samme Kravet mod den simple Kautionsist, hvorimod det er omtvistet, hvorvidt det samme gælder med Hensyn til Selvskyldnerkaution.

Kautionsforpligtelser kunne selvstændig forældes, nemlig naar Kreditor i Løbet af 20 Aar ikke holder sit Krav i Live overfor Kautionsisten.

Rentekupons, henhørende til en forældet Obligation, forældes samtidig med denne. Derhos kan den enkelte Kupon selvstændig forældes — nemlig naar den ikke hæves i 20 Aar efter Forfaldstiden — selv om Obligationen selv er holdt i Kraft.

Til Forældelse af Statsobligationer med Kupons kræves ifølge Lov 28 Januar 1871 ikke blot, at ingen Kupon for de sidste 20 Aar er fremkommet til Indløsning og Obligationen heller ikke paa anden Maade holdt i Kraft, men tillige, at der er forløbet 3 Aar efter den Rentetermin, til hvilken den sidste af de udstedte Kupons er forfalden.

For visse særlige Fordringer gælde særegne kortere Forældelsesfrister, saaledes for Vexler og Checks (se Vexelretten).



a right to advance a set-off, of which he cannot be deprived when the creditor transfers the claim.

When the two persons have a standing account, or the claims of the two opponents arise out of the same transaction (connected), it may be questioned whether the two computable claims, in as far as they are not based on a note of hand, can be considered as having made each other reciprocally void from the moment when they were advanced against each other by the two opponents, so that from this moment only interest on the balance will be computed.

In other cases the reciprocal cancellation of the claims does not take place until a set-off has been demanded by one of the parties, and interest continues to run until this has occurred.

With regard to the prescription of claims the Danish Law 5—14—4 provides:

“All notes of hand (money obligations) going back farther than twenty years shall be null and void unless they have been renewed within the said period with the debtor's signature or by the issue of a fresh note, or a formal demand has been made by the creditor, or he has made a declaration in the presence of witnesses or before a tribunal”.

The rule only speaks of notes of hand (money obligations), but by way of analogy it is also applied to all other claims of creditors, without regard to their origin and without regard to whether they are written or oral, conditional or unconditional.

The period of prescription for claims arising out of contracts runs from the day on which these were concluded, and this rule is considered as being absolute, so that the prescription is not excluded even when the parties have agreed on a day of payment which is more than 20 years distant, or have agreed that the claim shall not be subject to prescription.

The opinion, however, prevails that the period of prescription in the case of life assurance and similar claims does not begin to run until the day when payment can be demanded, and in the case of claims for damages not based on contracts, until the day when the creditor was able to know against whom he had the right of action.

The prescription is interrupted by any transaction occurring within the twenty years involving an acknowledgment on the part of the debtor or a claim on the part of the creditor.

Such acknowledgments may take the form of indorsements, or of renewal or they may be payments of interest or part-payments, or may take any other form, provided only such recognition can be proved, and this holds good also with regard to claims which may be extra judicial as well as those which are judicial, and which are not subject to any definite form.

When the prescription has been interrupted in such manner, a fresh period of prescription begins to run from the moment when the interruption occurs.

Whereas a pledge-holder does not lose his right to claim the realisation of the pledge, even if the personal claim against the debtor has been prescribed, it is doubtful whether the same holds good with regard to mortgagees (hypothecary creditors).

If the principal liability becomes barred by prescription, the claim as against the simple surety also becomes barred, whereas it is doubtful whether the same applies when a person is surety and at the same time a primary debtor.

Liabilities arising from suretyship may be independently prescribed when the creditor does not enforce his claim against the surety for a period of twenty years.

Interest coupons belonging to a prescribed bond are prescribed simultaneously with the bond itself. A single coupon, however, can be independently prescribed — i. e. when it has not been collected within twenty years of the day for payment — even when the bond itself is still in force.

In order that a prescription of State bonds with coupons can take place, the Act of 28th January 1871 requires not only that no coupons shall have been presented for payment during the last twenty years, and that the bond in no other manner shall have been maintained, but also that three years shall have elapsed since the interest term at which the last of the issued coupons was due for payment.

To certain kinds of claims special short periods of prescription apply, as for example to bills of exchange and cheques (see the Bills of Exchange Law).

Derhos er udstedt Lov Nr. 274 af 22 December 1908 om Forældelse af visse Fordringer, der er saalydende:

§ 1. For følgende Fordringer gælder en Forældelsesfrist af 5 Aar: 1. Fordring, som stottes paa Overenskomst om: a) Salg eller anden Overdragelse af Varer eller andet Losore, der ikke er afhændet som Tilbehør til fast Ejendom; — b) Brug af fast Ejendom eller Losore; — c) Ydelse af Ophold, Fortæring eller Forplejning; — d) Befordring af Personer eller Gods; — e) Udførelse af Arbejde eller Ydelse af personlig Virksomhed af hvilken som helst Art; — 2. Fordring paa Restance af stadigt tilbagevendende Afgift, som hviler paa fast Ejendom og uden særlig Vedtagelse gaar over fra Ejer til Ejer, paa forfalden Rente, paa Restance af Livrente, Overlevelserente, Pension, Aftægtsyndelse, Underholdsbidrag eller anden lignende Ydelse, der forfalder med bestemte Mellemrum og ikke er at betragte som Afdrag paa en skyldig Kapital; — 3. Fordring ifølge Forlofte, indgaaet for noget i denne Paragraf omhandlet Krav; — 4) Statens eller Kommunens Krav paa Skatter eller Afgifter af offentligretlig Natur; — 5. Fordring paa Erstatning for Skade, tilføjet udenfor Kontraktsforhold, medmindre Skaden er bevirket ved en Forbrydelse, for hvilken der under offentlig Straffesag paalægges Straf; og — 6. Fordring, som udenfor Tilfælde af Svig haves paa Betaling af, hvad nogen har ydet i urigtig Formening om, at Forpligtelse hertil paahvilede ham. Foranførte Forældelsesfrist er dog ikke anvendelig, naar der for Fordringen er udstedt Gældsbevis eller tilvejebragt andet særligt Retsgrundlag, hvorved dens Tilblivelse og Størrelse er anerkendt af Skyldneren eller paa anden Maade skriftligt fastslaaet.

2. Den i § 1 fastsatte kortere Forældelsesfrist regnes fra den Tid, da Fordringen af Fordringshaveren kan kræves betalt. Fordringen fortabes, medmindre Fordringshaveren inden Fristens Udlob enten erhverver Skyldnerens Erkendelse af Gælden eller foretager retslige Skridt mod ham og uden ufornodent Ophold følger disse til Erhvervelse af Forlig, Dom eller anden Retsafgørelse.

3. Naar den Fordringshaver, for hvem noget af de i § 1 ommeldte Krav er stiftet, paa Grund af utilregnelig Uvidenhed om sit Krav eller om Skyldnerens Opholdssted har været ude af Stand til at gøre sin Ret gældende, regnes den i § 1 omhandlede kortere Forældelsesfrist først fra den Tid, da Fordringshaveren var eller ved sædvanlig Agtpaagivenhed vilde have været i Stand til at kræve sit Krav betalt.

4. Den almindelige Forældelsesfrist af 20 Aar vedbliver ved Siden af den i § 1 fastsatte.

5. Denne Lov træder i Kraft den 1. Januar 1910.

Dens Bestemmelser finde Anvendelse ogsaa paa tidligere stiftede Fordringer, som ikke inden den nævnte Dag ere bortfaldne i Medfør af de hidtil gældende Regler. Dog skal Forældelse i Henhold til denne Lov i intet Tilfælde indtræde før Udgangen af Aar 1911, medmindre Fordringen ogsaa efter de hidtil gældende Regler vilde være bortfalden paa et tidligere Tidspunkt.

En Fordring kan endelig bortfalde ved, at den ikke i rette Tid er anmeldt efter et udstedt Proklama (Præklauson).

Præklausivt Proklama kan ifølge Skiftelov af 30 November 1874 udstedes i ethvert Dødsbo-Skifte, og det hvad enten Boet behandles af Skifteretten eller af Testamenteksekutorer eller af privatskiftende Arvinger. Fremdeles kan en Enke, der hensidder i uskiftet Bo, ved præklausivt Proklama indkalde sin afdøde Mands Kreditorer. Udenfor Dødstilfælde kan præklausiv Indkaldelse ske, naar Skifteretten efter Lodtagernes Begæring opgør et Bo, uden at Konkursbehandling finder Sted, saaledes i Skilsmisse-, Separations- og Interessentskabsboer.

Der kan endelig ogsaa være Tale om hos højere Ovrighed at erhverve en særlig Bevilling til med præklausiv Virkning at indkalde sine Kreditorer.

Derimod har den Kreditor-Indkaldelse, som finder Sted i Konkursboer, ingen præklausiv Virkning. Den har nærmest kun den Virkning, at den Kreditor, der ikke melder sig i Boet, inden det er optaget til Slutning, ingen Dividende faar i Boet, hvorimod han bevarer sit Krav mod Fallenten personlig.

Furthermore, Act No. 274 of 22nd December 1908 concerning the prescription of certain claims has been passed and reads as follows:

§ 1. To the following claims a period of prescription of five years applies: 1. Claims based on an agreement regarding: a) Sale or other transfer of goods or other movables which have not been disposed of as accessories of real estate; — b) The use of real estate or movables; — c) Allowance of lodging, food or board; — d) The carriage of persons or goods; — e) The carrying out of a work or the performance of any kind of personal labour; — 2. Claims regarding arrears of the perpetual charges on real estate which without special agreement pass from one owner to another; claims concerning interest due, arrears of annuities, reversionary annuities, pensions, maintenance of parents, alimentary allowances or other similar obligations which become due at regular intervals and are not considered as part-payments of a capital sum due for payment; — 3. Claims arising from promises made in connection with any kind of claim dealt with in this Article; — 4. The claims of the State and the municipalities for the payment of taxes, rates or dues of an official nature; — 5. Claims of compensation for damage outside matters of contract, unless the damage has been caused by a criminal offence subject to punishment pronounced in a public prosecution; and — 6. Claims, excepting cases of fraud, in respect of payment for what a person has yielded in the incorrect belief that he was liable to fulfil the obligation. The said period of prescription is however not applicable when a note of hand has been issued for the claim or some other special legal basis for the claim has been procured by which the debtor recognises the existence and amount of such claim, or in any other way confirms its existence and amount in writing.

2. The shorter period of prescription fixed according to § 1, runs from the time at which payment of the claim can be demanded by the creditor. The claim becomes barred unless the creditor before the expiration of the period either acquires the debtor's recognition of the debt, or takes legal steps against him, and without unnecessary delay follows these up with a view to obtaining a compromise, judgment or other judicial decision.

3. When the creditor in whose favour any of the claims mentioned in § 1 has arisen, owing to ignorance through no fault of his as to his claim or the residence of the debtor, has been unable to take advantage of his right, the shorter period of prescription mentioned in § 1 does not run until the time at which the creditor was or with ordinary care would have been able to demand payment of his claim.

4. The ordinary period of prescription of 20 years remains in force in addition to the period fixed in § 1.

5. This Act comes into force on the 1st January 1910.

The provisions of the Act are also applicable to claims previously arisen which within the mentioned period have not become barred owing to the rules thereunto in force. Prescription according to this Act, however, in no case takes place till after the expiration of 1911, unless the claim according to rules which were previously in force would have become barred at an earlier date.

Finally a claim may become barred owing to not having been presented in due time after the issue of a proclamation (preclusion).

A preclusive proclamation according to the Distribution Act of 30th November 1874, may be issued in the case of any estate of a deceased person, and whether the estate is administered by the Distribution Court or by the executor of the will or by heirs who privately divide up the inheritance between them. Furthermore, a widow retaining undivided possession of the estate of her deceased husband, may by means of a preclusive proclamation convene all the creditors of the estate. In other cases than those of death, a preclusive convening of creditors may take place when the Distribution Court, at the request of the interested heirs, settles an estate without proceedings of bankruptcy coming into operation, for example in the case of estates of divorced and separated persons and of partnerships.

There can finally be a question of convening the creditors with preclusive effect by way of a special permission obtained from the higher Authority.

On the other hand, the convening of creditors which takes place in bankruptcy estates has no preclusive effect. It has only as a consequence that the creditor who does not present his claim to the estate before the bankruptcy proceedings are closed, obtains no dividend in the estate, whereas he retains his claim against the bankrupt in person.

Proklamaer skulle bekendtgøres tre Gange i „Statstidenden“.

Ved Proklama ifølge Bevilling skal der gives Aars og Dags Varsel (d. v. s. et Aar og 6 Uger). 1 andre Tilfælde er Varslet 3 eller, efter Omstændighederne, 6 Maaneder.

At en Fordring prækluderes, paavirker ikke et derfor stillet Haandpant eller Pant i fast Ejendom, men derimod vistnok Underpant i Losore. Ved en Fordrings Prækclusion, fortabes Kravet mod den simple Kautionist, men ikke Kravet mod Selvskyldnerkautionisten. En selvstændig Prækclusion af begge Arter Kaution indtræder, naar Kreditor undlader at gøre Anmeldelse efter et af Kautionisten eller dennes Bo udstedt præklusivt Proklama.

### b) Almindelige Regler vedrørende Handelsforretninger.<sup>1)</sup>

Existensen af en særlig Handelsdomstol i Kjøbenhavn har medført, at der processuelt goes en Sondring mellem Handelssager og andre Sager (se ovf. S. 14).

Derimod goes der — som Følge af, at der ikke findes nogen dansk Handelslovbog — ikke civilretlig nogen legal Sondring mellem Handelsforretninger og Ikke-Handelsforretninger (saaledes som i den tyske Handelslovbogs §§ 343—345); men selvfølgelig kan der faktisk goes en saadan Sondring, dog ikke nogen skarp.

At der ved Handelsforretninger, naar det gælder Bedømmelsen af Handlingers og Undladelsers Betydning og Virkning, maa tages Hensyn til de i Handelshvet gældende Sædvaner og Usaneer, er ikke udtrykkelig udtalt i Lovgivningen som en almindelig Regel (saaledes som i t. Hlb. § 346), men maa betragtes som selvfølgeligt.

Kilder til Kendskab til saadan Handelsbrug (Kutymen, Usaneer) ere navnlig dels de af det kjøbenhavnske Grosserer-Societets Komité afgivne Responsa, hvilke stadig æskes enten til Brug under Retssager, eller for at undgaa Retssager, dels de til Benyttelse ved Handler i visse Brancheer autoriserede Sluttedler, d. v. s. Formularer, paa hvilke de paagældende Fagkutymen i mere eller mindre fyldigt Uddrag ere anførte. Bestemmelserne i disse Sluttedler er vel umiddelbart kun bindende for de Parter, som benytte dem ved Afslutningen af Køb og Salg, men som Udtryk for, hvad der almindelig betragtes som gældende Kutymen, faae de en videre rækkende Betydning. Der findes saadanne Sluttedler for Handler i Korn og i Foderstoffer (sidst reviderede 1909), i Smør (vedtagne 1889) i Kaffe (reviderede 1908—1909) og i Jærn og Metaller (vedtagne 1902) se ndf.

At den, der i Handelsforhold er pligtig at udvise en vis Omhu, i Almindelighed er pligtig at udvise den Grad af Omhu, som en ordentlig Købmand plejer at vise i den Art Forhold (t. Hlb. § 347), maa betragtes som selvfølgeligt. Denne Regel antages bl. a. ogsaa at gælde i Interessentskabsforhold. At Kravet til Omhu nedsættes, naar der foreligger Mora fra Kreditors Side, er ovf. omtalt.

Der findes i dansk Ret (ligesaa lidt som i t. Hlb. § 348) sat nogen Grænse for Størrelsen af den Ydelse, som man kan betinge sig som Konventionalbod. Selv om Konventionalboden aabenbart er større end det Tab, som Ikke-Opfyldelsen kan have forvoldt, ja selv om den er ganske uforholdsmæssig stor, eller Fordringshaveren overhovedet slet ikke har lidt noget Tab, udelukker dette ham dog ikke fra at kræve den fuldtud.

Det maa staa en Kreditor frit for at lade Konventionalboden ubenyttet og kræve Opfyldelse af Hovedpligten eller Erstatning for Ikke-Opfyldelse efter almindelige Regler. Hvis imidlertid Konventionalboden forlanges, antages Formodningen at være for, at denne tillige i større eller mindre Omfang skal fungere som Erstatning for den ved Ikke-Opfyldelsen forvoldt Skade. I saa Henseende opstiller Teorien følgende Regler som vejledende:

Dersom Konventionalboden er vedtagen for Ikke-Opfyldelse overhovedet, maa den formodes at skulle træde i Stedet for Hovedpligtens egentlige Opfyldelse

<sup>1)</sup> Nærværende Afsnit angiver Punkt for Punkt, hvorvidt Regler, svarende til de i den tyske Handelslovbogs 34de Bogs 1ste Afsnit indeholdte, kunne antages at gælde i dansk Ret eller ej.

Proclamations must be published three times in the "State Gazette".

In the case of proclamations according to obtained permissions there must be a notice of a year and a day (i. e. one year and six weeks). In other cases the notice is of three or, according to circumstances, six months.

The preclusion of a claim does not affect any pledge or any mortgage of immovables given as security, but on the other hand, it certainly operates in case of a hypothecation of movables. The preclusion of a claim has the effect that the claim against a simple surety is lost, but not the claim against a surety who undertakes a primary liability. An independent preclusion of both kinds of surety takes place when the creditor omits to present his claim after a preclusive proclamation issued by the surety or his estate.

### b) General rules concerning commercial operations.<sup>1)</sup>

The fact that there is a special commercial tribunal in Copenhagen has in judicial procedure brought about a distinction between commercial and other matters (see above p. 14).

On the other hand — owing to the fact that there is no Danish Commercial Code — no legal distinction is made in civil law between commercial and non-commercial operations (as for instance is the case in the German Commercial Code §§ 343—345); but of course such a distinction can in fact be made, although not a rigorous one.

The law does not expressly say as a general rule that, when in commercial operations there is a question of estimating the importance and consequences of an act or the omission to perform an act, the customs and practice obtaining in commercial life must be taken into consideration (as the German Commercial Code does in § 346); but this must be considered as obvious.

The sources containing such commercial practice (customs, habits) are notably in the first instance the *Responsa* issued by the committee of the Copenhagen Wholesale Society, which are always resorted to either for furthering or for avoiding legal actions; secondly the brokers' notes, i. e. forms authorised for use in the operations of certain kinds of businesses; these brokers' notes contain a more or less complete extract of the customs obtaining in the branch of business concerned. The regulations contained in these notes are, it is true, directly binding only on those parties who use them when purchases and sales are concluded, but their importance goes further, in so far that they indicate what is generally considered as binding custom. Such brokers' notes are issued for transactions in grain and feeding stuffs (revised the last time in 1889), in coffee (revised 1908—1909) and in iron and metals (authorised 1902); see below.

That the person whose duty it is to exercise a certain amount of care in commercial transactions in general shall exercise this care to the same degree as an ordinary trader is accustomed to exercise in the same kind of transactions (German Commercial Code § 347), must be considered as obvious. This rule is amongst others also considered applicable to matters relating to trading associations. It has been mentioned above that less care is expected when the creditor is responsible for delay (*in mora*).

Danish law (no more than the German Commercial Code § 348) provides no limit for the extent of the obligation which can be stipulated under the name of a penalty. Even if a conventional penalty is obviously greater than the loss which the non-fulfilment may have caused, even if it is quite disproportionately large, or the promisee has not suffered any loss at all, this does not prevent him from claiming the full amount of the penalty.

A creditor is at liberty to refrain from claiming the penalty and to claim the fulfilment of the principal obligation or compensation for non-fulfilment according to ordinary rules. If however the penalty is demanded, it is assumed that it is also intended to serve more or less as a compensation for the damage caused by the non-fulfilment. In this respect theory has adopted the following as guiding rules:

If the penalty has been stipulated for non-performance in general, it is presumed that it is substituted for the actual performance of the principal obligation,

<sup>1)</sup> This section indicates point by point whether the rules corresponding to those contained in the first section of the third book of the German Commercial Code can be said to apply in Danish law or not.

og at fastsætte et Minimumsbeløb for den Erstatning, der kan kræves for den hele Ikke-Opfyldelse.

Gaar Vedtagelsen derimod ud paa, at Bodens skal erlægges i Tilfælde af visse bestemte Mangler ved Opfyldelsen f. Ex. for siddig Opfyldelse, kan den kun antages at skulle opveje netop denne Mangel og maa angive Minimumsbeløbet for Erstatningsansvaret for denne, medens Kontrakten i øvrigt kan fordres opfyldt efter almindelige Regler.

Videre maa i al Almindelighed fremhæves, at, naar en Konventionalbod gaar ud paa at sikre en positiv Forpligtelses Opfyldelse, antages Formodningen at være for, at Pligten til at erlægge Konventionalboden er betinget af, at den paagældende Ikke-Opfyldelse er en saadan, som efter almindelige Regler paadrager Skyldneren Ansvar for den derved forvoldte Skade. Men naturligvis kunne særlige Omstændigheder give Grund til at fortolke Bodens Vedtagelse som givende Fordringshaveren en yderligere og absolut Garanti mod Ikke-Opfyldelse. Dog kan Skyldneren aldrig antages at skulle hæfte for den Ikke-Opfyldelse, som foraarsages ved Fordringshaverens eget Forhold.

Gaar Konventionalboden derimod ud paa at sikre en Undladelse, antages den som Regel at være forfalden, saasnart den paagældende modstridende Handling er foretaget.

Den, der paatager sig en Kaution for Pengeforpligtelser eller lign. generelt bestemte Ydelser, antages som almindelig Regel kun at hæfte som „simpler Kautionist“ d. v. s. kun at være pligtig at betale, naar Kreditor har oplyst ikke at kunne faae Betaling hos Hovedskyldneren. Selvskyldnerkaution foreligger kun, naar Kautionisten særlig har paataget sig denne Art af Kaution, eller hvor en særlig Lovregel eller sædvanemæssig Hjemmel i saa Henseende foreligger, og her maa da fremhæves, at ifølge Handelskutyeme opfattes sædvanlig Kaution i Handelsforhold (ligesom efter den t. Hlb. § 349) i Mangel af Forbehold saaledes, at Kautionisten hæfter som Selvskyldnerkaution (staar „del credere“).

I øvrigt skal med Hensyn til Kaution bemærkes følgende:

Hvor ikke særlige Omstændigheder tyde paa andet, antages Formodningen at være for, at Kautionisten kun garanterer imod Handlinger og Undladelser, som efter deres almindelige Karakter ere egnede til at paadrage Ansvar.

Naar Kaution er indgaaet for Betaling af Varer, som leveres en Anden, antages Kautionisten kun at indestaa for Varernes Kobesum, men ikke for andre Forpligtelser, der i Anledning af Købet maatte komme til at paahvile Køberen overfor Sælgeren. Kautionsforpligtelser af denne Art, der ikke indeholde nogen Begrænsning, antages at maatte medføre fortløbende Kautionsforpligtelse, og ikke blot at angaa en enkelt Leverance.

Et Kautionskrav kan først gøres gældende, naar det Tidspunkt, paa hvilket Hovedskyldneren er pligtig at opfylde, er oversiddet af denne. At Hovedskyldneren inden dette Tidspunkt dør eller kommer under Konkurs, kan ordentligvis ikke berettigede til at søge Kautionisten for Hovedforpligtelsens Forfaldstid.

Som almindelig Regel maa gælde, at Kautionisten skal godtgøre den Sikrede det Tab, der paadrages denne ved den Handling eller Undladelse, som Kautionen omfatter, derunder dog ordentligvis ikke saadant Tab, der skyldes særegne Omstændigheder, som have ligget udenfor fornuftig Beregning fra Kautionistens Side ved Kautionens Overtagelse.

Overfor det Spørgsmaal, om Kautionisten ved Kautionens Indfrielse uden videre indtræder i Kreditors Krav mod Hovedskyldneren, staar saavel Teori som Praxis vaklende. Det vil derfor være forsigtigst, at Kautionisten ved Kautionens Indfrielse udtrykkelig forbeholder sig Ret til mod Indfrielsen at erholde Hovedfordringen overdraget. Saadan Transport vil derhos ordentligvis være nødvendig eller dog hensigtsmæssig til hans Legitimation.

Uden Hensyn til hvad man mener om Kautionistens Ret i Kraft af selve Indfrielsen, vil der, naar Kautionisten har overtaget Kautionen efter Anmodning fra Skyldneren eller i øvrigt med dennes Samtykke, tilkomme Kautionisten en Ret til af Skyldneren at fordrø sig holdt skadesløs for, hvad han har maattet udrede ifølge den Kautionsforpligtelse, som han er anmodet om at overtage. Dog kan han ikke forlange Godtgørelse for Procesomkostninger, fordi han har ladet det komme

and that it fixes a minimum amount for the damages which may be demanded for the entire non-performance.

If on the other hand the stipulation purports that the penalty is to be paid in the case of certain specified breaches occurring, e. g. delay in fulfilment, it is only supposed to compensate for default in this respect and must indicate the minimum amount of damages recoverable by reason of such default, whereas the fulfilment of the contract can be demanded according to the ordinary rules.

Furthermore, it must be pointed out as a general rule that when the penalty has as its object to ensure the fulfilment of a positive obligation, it is presumed that the duty of paying the penalty is conditional on the fact that the non-fulfilment in question is such as according to ordinary rules makes the debtor responsible for the damage caused by the non-fulfilment. But of course special circumstances may afford reasons for interpreting the stipulation of the penalty as giving the creditor a further and absolute guarantee against non-fulfilment. The debtor can, however, never be supposed to be liable for the non-fulfilment which is brought about by the creditor's own conduct.

If, on the other hand, the penalty has in view to ensure against an omission, the penalty, as a rule, is supposed to be due as soon as the act which is contrary to the contract has been done.

A person who becomes surety for a payment in cash, or for performance of some other promise stipulated in a general way, is as a rule supposed to be liable only as "simple surety", i. e. to be liable to pay only when the creditor has proved that he is unable to obtain payment from the principal debtor. A suretyship in which the surety undertakes a primary liability only arises when the surety has expressly assumed this kind of liability, or in cases where a special legal rule or one based on custom is applicable, and here must be pointed out that according to commercial custom, and when no reservation has been made, suretyship in connection with commercial transactions (as according to the German Commercial Code § 349) is generally considered as involving that the surety undertakes a primary liability ("del credere" liability).

Furthermore, the following remarks with regard to suretyship may be made:

Where special circumstances do not indicate the contrary it is presumed that the surety only guarantees against acts and omissions which owing to their general nature are such as to entail liabilities.

When a guarantee has been given for payment for goods which are delivered to another person, the surety is only supposed to guarantee the price of the goods, and not other liabilities incurred by the purchaser through the transaction with regard to the seller. Suretyship obligations of this kind, if given without restriction, are presumed to involve a continuous liability, and not to be limited to a single delivery.

A claim arising out of a guarantee cannot be presented for payment until the date at which it is the principal debtor's duty to pay the claim has passed. That the principal debtor dies or becomes bankrupt before this date are not occurrences which as a rule entitle the creditor to sue the surety before the date for payment by the principal.

The general rule obtains that the surety must indemnify the creditor against losses incurred by him owing to the act or omission stipulated in the guarantee, but not as a rule against losses due to special circumstances which were beyond the surety's reasonable calculation when the guarantee was given.

The question whether the surety when paying the creditor immediately assumes the creditor's right as against the principal debtor is doubtful in theory as well as in practice. It is therefore the most cautious way for the surety, when paying the creditor, to expressly reserve for himself, against payment, the right to obtain a transfer of the principal claim. Such transfer is in general also necessary, or at any rate expedient, in order that he may be in a position to prove his right.

Without regard to what is the opinion in regard to the surety's right in virtue of the payment itself, the surety, when he has assumed the liability at the instance of the debtor, or at any rate with his consent, acquires the right to demand an indemnity from the debtor for what he has been compelled to pay according to the liability which he has been asked to assume. He is, however, not entitled to demand recovery of the expenses of proceedings when he has allowed a lawsuit to arise, of

til Proees, for Morarenter, fordi han har betalt for sent, eller for andre saadanne særlige Udgifter, der maa tilregnes hans eget urigtige Forhold.

Naar Skyldneren opnaar Tvangsakkord, kan der kun være Tale om, at Kauti-  
onisten ved Indfrielse erhverver Hovedfordringen, saaledes som den ved Tvangs-  
akkorden er blevet nedsat. Ligeledes maa Kauti-  
onistens paa Skyldnerens Anmod-  
ning stottede Regresret ved Tvangsakkorden blive nedsat til dennes Beløb, jvf.  
Konkurslovens § 120. Ved at udløse Fordringshaveren forinden Akkordforhand-  
lingerne kan Kauti-  
onisten erhverve Stemmeret under disse.

Medens det vel maa opstilles som Hovedreglen, at Kautionsloftets Gyldighed  
er betinget af, at Hovedforpligtelsen er gyldig, eller med andre Ord, at der til-  
kommer Kauti-  
onisten (og det hvad enten han er Selvskyldnerkauti-  
onist eller simpel  
Kauti-  
onist) de samme Indsigelser, som i Hovedforholdet tilkommer Skyldneren,  
vil der dog jævnlig kunne paavises Grund til Undtagelse herfra, nemlig forsaavidt  
Kauti-  
onisten maa betragtes som havende garanteret mod visse Indsigelser. Navnlig  
i det praktisk sædvanlige Tilfælde, at det er Skyldneren, der skaffer Kauti-  
onisten, eller denne dog træder til uden Opfordring fra Kreditors Side, ligger det nær at  
gaa ud fra, at Kauti-  
onisten garanterer mod Tilstedeværelsen af eller overtager  
Risikoen med Hensyn til saadanne Indsigelser, hvis Tilstedeværelse eller Ikke-  
Tilstedeværelse Kauti-  
onisten gennem en almindelig Undersøgelse kan forudsættes  
at komme paa det rene med.

Hvad særlig Skyldnerens Umyndighedsindsigelse angaar, er det saaledes an-  
taget, at Kauti-  
onisten maa være bunden, naar han har paataget sig Kauti-  
oneren  
trods Kendskab til Umyndighedsindsigelsen. Ligeledes bør han formentlig være  
bunden, naar han hos Kreditor har fremkaldt den Forestilling, at han vidste Besked  
med Hovedskyldnerens Myndighedsforhold, og dog ikke har taget noget Forbehold.

Kautionsforpligtelsen bortfalder selvfølgelig, naar Hovedforpligtelsen er fyldest-  
gjort. Hvis imidlertid Skyldneren staar i flere Gældsforhold til Fordringshaveren,  
kan Fordringshaveren uden Hensyn til Kauti-  
onisten afskrive Betalingen paa de  
Fordringer, som Kauti-  
oneren ikke gælder for, medmindre særlige Omstændigheder  
medføre andet. Paa lignende Maade kan Kreditor ordentligvis, naar Kauti-  
oneren  
kun dækker en Del af Fordringen, først afskrive Afbetalinger paa den ikke ved  
Kauti-  
oneren sikrede Del af Fordringen.

Naar en Betaling af den ved Kauti-  
oneren sikrede Gæld omstodes i Henhold til  
Konkurslovens Afkræftelsesregler, antager Teorien, at Kauti-  
onistens Pligt ikke  
genopvaagner, medens Praxis er tilbøjelig til at antage, at Kauti-  
onistens Pligt  
genopvaagner, forsaavidt som ikke Omstændighederne oplyse, at han har lidt Tab  
ved det Passerede.

Naar Fordringshaveren eftergiver Skyldneren Fordringen, vil Kauti-  
oneren i  
Almindelighed bortfalde.

En Overenskomst mellem Kreditor og Debitor, der ikke forandrer Hoved-  
forholdets Indhold, men kun giver det et nyt Grundlag, eller som kun medfører  
Forandringer, der ere ganske uvæsentlige for Kauti-  
onisten eller endog ere til hans  
Gavn, vil ikke bringe Kauti-  
oneren til Ophor. Derimod maa væsentlige Forandringer  
af Hovedforholdet, foretagne uden Kauti-  
onistens Samtykke, frigøre ham. Saaledes  
er det ved lang Praxis antaget, at Kautionsforpligtelsen i Almindelighed bortfalder,  
naar Fordringshaveren har givet Skyldneren en kontraktmæssig Henstand, med-  
mindre da Henstanden kun er det naturlige Led i en Afvikling eller i øvrigt maa  
antages at være uvæsentlig for Kauti-  
onistens Risiko. Derhos er det i Konkurs-  
lovens § 113 foreskrevet, at den Henstand, der indrømmes ved Tvangsakkord,  
ingen Indflydelse har paa Kauti-  
onistens Retsstilling overfor Kreditor.

Naar Kreditor opgiver de Panterrettigheder og andre Fortrinsrettigheder, der  
knytte sig til den ved Kauti-  
oneren sikrede Fordring, antages han at tabe sin Ret  
mod Kauti-  
onisten.

Bortset fra Indrømmelse af kontraktmæssig Henstand og Opgivelse af Fortrins-  
rettigheder er dansk Retspraxis tilbøjelig til at antage, at Kreditor ved irregulær  
Adfærd i Hovedforholdet, som er egnet til at skade Kauti-  
onisten eller forøge hans  
Risiko, taber sin Ret overfor denne, og navnlig antages det, at Kreditor i Almindelig-  
hed ikke taber sin Ret mod Kauti-  
onisten, blot fordi han efter Forfaldstids Ind-  
træden lader sit Krav paa Hovedskyldneren hvile uden at underrette Kauti-  
onisten derom.



interest for delay when he has paid too late, or of such other special expenses as are caused by faulty proceedings on his own part.

When the principal debtor obtains a composition (in case of bankruptcy), there can only be a question of the surety acquiring, on payment, the principal claim as reduced according to the stipulations of the composition.

Similarly the surety's right of recovery, based on the debtor's request, in the case of composition must be reduced to the amount of its estimate; see the Bankruptcy Act § 120. By paying the creditor before the proceedings of the composition take place, the surety obtains the right to vote therein.

Whereas it must be considered as a main rule that the validity of the surety's promise depends on the validity of the principal obligation, or in other words, that the surety has (and this is the case whether he is a surety who undertakes a primary liability or simple surety) the same defences as the debtor in the principal obligation; there will however usually be reasons available which justify exceptions from this rule, viz., in so far as the surety is considered as having guaranteed against certain defences. Notably when, as is in practice generally the case, the debtor procures the surety, or the latter presents himself without the creditor having asked him to do so, one is justified in assuming that the surety guarantees against the occurrence of or takes upon himself the risk with regard to defences, of the existence or non-existence of which he could have acquired knowledge by an ordinary investigation.

Especially as regards the debtor's defence of minority, it is clear that the surety is liable when he has assumed the suretyship in spite of knowledge of the defence of minority. He is presumably also liable when he has made the creditor believe that he knew of the principal debtor's minority, and in spite of this made no reservation in respect of this fact.

The surety's liability of course ceases when the principal liability has been discharged. If, however, the debtor has several liabilities towards the creditor, the creditor can, without considering the surety, appropriate payments to those liabilities for which the surety is not liable, unless special circumstances decide otherwise. Similarly the creditor, as a rule, when the surety is liable only for part of the claim, is entitled in the first instance to appropriate part-payments to that part of the claim which is not guaranteed by the surety.

When the payment of a debt which is guaranteed by suretyship is annulled according to the rules of invalidation of the Bankruptcy Act, it is in theory assumed that the surety's liability does not revive, whereas practice is inclined to assume that his liability does revive, if circumstances do not indicate whether he has suffered loss through what has happened.

If the creditor releases the debtor from payment, the guarantee will as a rule become void.

An agreement between the creditor and the debtor which does not alter the terms of the principal transaction, but only gives it a new basis, or which only brings about such alterations in it as are quite without importance for the surety, or even are beneficial to him, does not bring the suretyship to an end. On the other hand, essential alterations of the principal obligation, made without the surety's consent, discharge him from further liability. After long practice the general opinion is that the liability of the surety ceases when the creditor has granted the debtor a delay by way of contract, unless this delay is only a natural consequence of a liquidation, or as a matter of fact must be considered as being unessential to the surety's risk. The Bankruptcy Act § 113 furthermore provides that a delay granted by a composition does not affect the surety's legal position with regard to the creditor.

When the creditor renounces those pledge-rights and other privileges which arise from the claim guaranteed, he loses his right as against the surety.

Apart from the granting of delay by a contract and the renunciation of privileges, Danish legal practice is inclined to assume that the creditor, owing to irregular proceedings in regard to the principal transaction which are likely to prejudice the surety or to aggravate his risk, loses his right as against the surety, but it is in particular assumed that the creditor as a rule does not lose his right as against the surety only because, after the day for payment, he allows his claim as against the principal debtor to rest without informing the surety of this contingency.

At Skyldnerens Forpligtelse ved hans Død gaar over paa hans Arvinger eller paa hans i uskiftet Bo hensiddende Enke, frigør ikke Kautionsisten, og det end ikke, selv om Arvingerne ikke vedgaa Gælden, og Boet viser sig utilstrækkeligt til Gældens Betaling.

Kautionsretten kan normalt overdrages tilligemed Hovedfordringen og maa endog formødes uden videre at medfølge ved dennes Overdragelse.

Naar Flere i Forening uden Begrænsning have indgaaet Kaution for et Forhold og ikke særlig (saasom ved Udtrykket „En for Alle og Alle for En“ eller lign.) have paataget sig umiddelbart solidarisk Ansvar, hæfte de principalt pro rata, subsidiært in solidum.

Der er i dansk Ret ligesaa lidt for Kautionsforpligtelser som for andre Gældsforpligtelser eller Forpligtelser overhovedet (bortset fra Vexler, Checks, Konnossementer og Bodmeribreve) foreskrevet lagttagelsen af nogen bestemt Form. Det mundtlige Lofte er derfor, hvis det ellers kan bevises, ligesaa forbindende som det skriftlige (sml. t. Hlb. § 350). —

Den almindelige civilretlige Regel om Rente maa i dansk Ret antages at være den, at Rente kun skal svares, hvor saadant er udtrykkelig eller stiltiende vedtaget eller er hjemlet ved særlig Lov eller Sædvane.

Saaledes maa det vistnok antages, at der af Pengelaan, som ere bestemte til at have en vis Varighed, som naturale negotii maa svares Renter, naar ikke særlige Omstændigheder tale for, at dette ikke har været Meningen.

Endvidere antages i Handelsforhold en Pligt til at svare Rente til en vis Grad sædvanemæssig hjemlet, om end Grænserne i saa Henseende ikke ere klart afstukne. Saa meget kan dog siges, at i Køb mellem Handlende (d. v. s. Næringsdrivende) skal Køberen, naar der er fastsat en bestemt Betalingstid, og denne oversiddes, svare Rente af Købesummen fra Kredittidens Udløb (og da med 6 pCt. aarlig). Er en bestemt Betalingstid ikke fastsat, har Køberen at svare Rente fra den Dag, da Levering har fundet Sted, eller, hvis Leveringen paa Grund af Køberens Forhold er blevet forsinket, fra den Dag, da Forsinkelsen indtraadte (jvf. Lov om Køb § 38, se ndf. S. 80). I Sammenhæng hermed antages der at være sædvanemæssig Hjemmel for at beregne Renter af de enkelte forfaldne Poster i et løbende Mellemværende mellem Handlende (Kontokurant), saavel som for, at Kommissionæren i Handelsforhold kan forlange Renter af ydede Forskud og udlagte Købesummer. Loven om Køb § 38 bestemmer endvidere, at i Køb udenfor Handelsforhold skal Køberen, hvad enten der er fastsat en bestemt Betalingstid eller ej, svare 5 pCt. aarlig Rente af Købesummen fra den Dag, da Betaling skulde have været erlagt. Modtager Køberen Regning fra Sælgeren paa et Tidspunkt, da Købesummen kan kræves betalt, paaløber Renten fra Regningens Modtagelse, uden at yderligere Paaskrav er fornødent.

I øvrigt gælder den øvf. S. 59 omtalte almindelige Regel i Lov 6 Apr. 1855, at den legale Morarente er 1 pCt. højere end den i øvrigt gældende, men først begynder at løbe, naar Retsforfølgningsskridt paabegyndes. Denne Renteforhøjelse indtræder dog ikke i de Tilfælde, hvor Rentebetalingen er hjemlet ved § 38 i Loven om Køb.

Er det i et eller andet Forhold givet, at der skal svares Rente, men intet vedtaget angaaende Rentens Størrelse, anses 4 pCt. p. a. for den normalt gældende Rentefod, der maa komme til Anvendelse, men særlige Sædvaner kunne medføre Modifikationer heri, og navnlig er der i Handelsforhold en vis Tilbøjelighed til at anse 6 pCt. (eller undertiden 5 pCt.) som Normalrenten, uden at det dog er muligt bestemt at angive Rækkevidden af denne Handelssædvane. Sml. med det anførte t. Hlb. §§ 352—353. —

At den, der i sin Nærings Medfør udfører Forretninger eller andre Hverv for en Anden, derfor kan forlange Provision og, hvis det drejer sig om Opbevaring,

That the debtor's liabilities on his death pass to his heirs or to his widow who retains undivided possession of the estate of her husband, does not discharge the surety, not even when the heirs do not recognise the debt, and the assets of the estate prove insufficient for the payment of the debts.

The right against the surety can normally be transferred together with the principal claim, and this must even be presumed as being legally implied in the transfer of the claim.

When several persons jointly, and without any limitation, have given a guarantee for an obligation, and without specially (as for instance by the term "one for all and all for one" etc.) assuming a direct joint responsibility, they are principally liable according to their individual proportions, and are subsidiarily liable jointly.

Danish law, in the case of liabilities arising out of guarantees, as in the case of liabilities arising out of debts or obligations in general (apart from bills of exchange, cheques, bills of lading and bottomry bonds), does not require the observance of any definite form. A verbal promise is therefore, if it can only be proved, quite as binding as a written one (compare German Commercial Code § 350).

The usual rule of the civil law concerning interest is, in Danish law, that interest shall only be paid when it has been expressly or tacitly agreed on, or is authorised by a special law or custom.

It is clear that on money loans intended to have a certain duration, interest has to be paid as a *naturale negotii*, when special circumstances do not indicate that this has not been intended.

Furthermore, an obligation to pay interest in commercial transactions is to a certain extent considered as being authorised by custom, although the limits in this respect have not been clearly drawn. This much can however be said, that when sales between traders (i. e. between those who carry on a certain trade as a profession) are concerned, the purchaser, when a definite term for payment has been agreed on, and has been exceeded, has to pay interest on the price from the expiration of the credit term (and then 6 per cent. per annum). If a definite day of payment has not been fixed, the purchaser pays interest from the day on which the delivery of the goods took place, or if the delivery of these owing to the purchaser's fault has been delayed, from the day on which the delay commenced (compare the Sales Act § 38, see below p. 80). In this connection it must be assumed as being authorised by custom that interest has to be paid on each amount which is due in a running account between traders (account current), and that a commission agent in commercial transactions can claim interest on his advances and on purchase monies which he has paid. The Sales Act § 38 furthermore provides that when bargains are concluded which are not commercial transactions, the purchaser, whether a definite day for payment has been agreed on or not, has to pay 5 per cent. interest on the amount of the purchase money from the day on which payment should have been made. If the purchaser receives a debit note from the seller at a time when the price can be demanded, interest runs from the moment when the debit note was received without any further demand in this respect being necessary.

Furthermore, the general rule of the Act of 6th April 1855, mentioned above p. 59, applies, according to which the legal interest applicable in the case of delay (*mora*) is one per cent. higher than that applied in general, but it does not begin to run until an action has been brought. The augmentation of the rate of interest, however, does not take place in those cases in which the payment of interest has been authorised by § 38 of the Sales Act.

If it has been stipulated in any circumstances that interest has to be paid, but no stipulation is made as to the rate of interest, 4 per cent. per annum is considered as being the normal rate applicable, but special customs may bring about modifications of this rate, and notably in commercial transactions there is a certain tendency prevailing to consider 6 per cent. (or sometimes 5 per cent.) as being the normal rate of interest. It is, however, impossible definitely to indicate the scope of this commercial custom. Compare with what has been said the German Commercial Code §§ 352—353.

Danish law does not expressly say that a person who in the pursuance of his trade does business or carries out transactions on behalf of another person, is entitled

Pakhusleje o. lign. efter de paa Stedet brugelige Taxter, selv om saadant Vederlag ej er aftalt, er ikke udtrykkelig udtalt i dansk Ret, men maa dog antages at være gældende Regel (Sml. t. Hlb. § 354, 1 Stk.).

Ligeledes maa ordentligvis den, der i sin Næring yder en Anden Pengelaan eller Forskud eller lægger Penge ud for ham, kunne beregne Renter deraf fra Betalingsdagen (Sml. t. Hlb. § 354, 2 Stk.).

Begge de to sidstnævnte Regler kunne dog selvfølgelig ikke gælde, naar det i den paagældende Art Forhold eller mellem de to Parter er Skik at gøre den Art Tjenester gratis. —

Om Kontokurant-Forholdet (t. Hlb. §§ 355—357) findes ingen Lovregler i dansk Ret. Hvorvidt der kan beregnes Rente af den Saldo, der fremkommer ved Opgørelserne, beror paa Vedtagelse eller Sædvane, og som ovf. sagt er det i Handelsforhold almindeligt at beregne Rente (gærne 6% p. a.) af de forfaldne Poster i Kontokurantforhold.

Opgørelsen sker gærne halvaarsvis.

Hvorvidt et Kontokurantforhold kan bringes til Ophor udenfor de normale Opgørelsestider ved ensidig Opsigelse fra en af Parterne, maa bero paa det enkelte Tilfældes Beskaffenhed; nogen almindelig, præsumtiv Regel i saa Henseende ses i hvert Fald ikke at være opstillet.

Det antages, at de til en Fordring knyttede Fortrins- og Sikkerhedsrettigheder bortfalde ved Fordringens Optagelse paa Kontokuranten, medmindre de særlig — udtrykkelig eller stiltiende — forbeholdes. De kunne altsaa ikke gøres gældende til Fordel for den indenfor bemeldte Fordrings Grænser liggende Saldo eller Del af saadan. Noget klart Højesteretspræjudikat i saa Henseende foreligger dog ikke.

Den enkelte under Mellemværendet hørende Post er som en Bestanddel af et samlet Hele blevet bunden saaledes, at den, medens Kontokurant-Perioden løber, ikke særskilt kan fordres betalt eller betales eller transporteres eller tilegnes af Fordringshaverens Kreditorer, medmindre Parterne træffe Aftale om, at den skal udgaa af Kontokurantforholdet. Derimod er der Intet til Hinder for, at der, endnu medens Perioden løber, foretages Transport af eller Eksekution i den eventuelle Saldo. Dog maa der gives den anden Part i Kontokurantforholdet Underretning om saadan Transport eller Eksekution, inden Saldoen indgaar som Post i Kontokuranten for den følgende Periode. Ligeledes maa formentlig Transport af eller Eksekution i den i Øjeblikket foreliggende Saldo kunne finde Sted, men dog kun uden Forringelse af den anden Kontokurant-Parts Retsstilling.

Anerkendelse af en Kontokurant eller af en Regning udelukker ikke Bevis for, at der er Fejltagelser eller Svig i Opgørelsen. —

At Opfyldelse ved Handelsforretninger kun gyldig kan tilbydes og fordres indenfor den i det paagældende Forhold sædvanlige Forretningstid (t. Hlb. § 358), medmindre andet er udtrykkelig eller stiltiende vedtaget, maa anses som selvfølgelig. Derimod tør man næppe opstille som almindelig Regel, at man, hvor Opfyldelsestiden er angivet som „Føraar“, „Efteraar“ eller paa lignende Maade, altid skal forstaa saadant i Overensstemmelse med Opfyldelsesstedets Handels-sædvane (t. Hlb. § 359, 1 Stk.). Ej heller, at Opfyldelsesstedets Maal, Vægt, Mont, Tidsregning og Afstandsbestemmelser i Tvivlstilfælde altid skulle betragtes som vedtagne (t. Hlb. § 361).

Der findes nemlig i saa Henseende hverken nogen udtrykkelig almindelig Regel eller nogen fast Praxis. Afgørelsen maa bero paa, hvad der er den naturligste Forstaaelse af den enkelte Kontrakt eller paa, hvad der er Kytyme i de forskellige Brancher.

Lignende Bemærkninger gælde om Udtrykket „8 Dage“ (t. Hlb. § 359, 2 Stk.), der undertiden tages bogstaveligt, undertiden i Betydningen en Uge. —

I Mangel af nærmere Aftale eller en — f. Ex. i Prisen liggende — tydelig Forudsætning om en Vares Beskaffenhed, skal Sælgeren levere „almindelige gode

owing to such fact to demand commission and, if it is a question of storage, storage rent etc. according to the storage rates obtaining at the place in question, even if such payment has not been agreed on; this must however be considered the general rule. (Compare German Commercial Code § 354, 1st paragraph).

Similarly, a person who in pursuance of his trade grants another person a loan, or advances him money, or pays a debt on his behalf, is as a rule entitled to demand interest on such amounts from the day for payment. (Compare German Commercial Code § 354, 2nd paragraph).

The two last rules of course do not apply, when in transactions of the kind in question, or between the two parties, it is the custom to render that kind of services gratuitously.

There are no rules in Danish law applicable to running accounts (German Commercial Code §§ 355—357). How far it is justified to calculate interest on the balance of the accounts, depends on agreement or custom, and, as has been said above, it is in commercial transactions customary to reckon interest (usually 6% per annum) on amounts which are due in running accounts.

The settlement is generally drawn up every half year.

How far a running account may be settled outside the usual terms for settlement of accounts by means of a unilateral notice given by either of the parties, depends on the nature of the case in question; at any rate there does not seem to be any general presumptive rule available in regard to this point.

It is assumed that the privileges and rights of security connected with every claim become void, when this is entered in the account current, unless they have specially — expressly or tacitly — been maintained. Consequently they cannot be set up in favour of the balance existing within the limits of the claim in question, or in favour of part of such a balance. There is, however, no judgment of the Supreme Tribunal bearing on this point.

All the items of a running account are, like parts of one whole, bound together in such a manner that, while the period of the account is running, they cannot separately be asked for as payment, or be paid, or be assigned or be seized by the party to whom they are due, unless the parties agree that the particular item shall be struck out of the account. On the other hand, there is nothing which prevents, while the period is still running, the eventual balance from being assigned or seized. The other party to the running account must, however, be informed of the assignment or seizure before the balance is carried forward to the succeeding period. Similarly, an assignment or seizure of the balance existing at the moment can be effected, without however causing any prejudice to the legal position of the other party to the running account.

The recognition of a running account or of a debit note as being correct, does not exclude the proof of errors having been made or fraud committed in the settlement.

It is considered as a matter of course that, when nothing else has been expressly or tacitly stipulated, the carrying out of commercial transactions can be legally offered and demanded only within the usual office hours customary in the kind of business in question (German Commercial Code § 358).

On the other hand, the general rule cannot be said to be admitted that, where the period for carrying out business is designated as "Spring", "Autumn", or in a similar manner, this is always to be understood according to the commercial custom obtaining at the place where the business in question is done (German Commercial Code § 359, par. 1). Nor is it considered as certain that the measure, weight, money, calendar and mode of calculating distance which are used at such place, in doubtful cases always apply (German Commercial Code § 361).

There is in this respect neither any definite general rule applicable, nor any fixed practice. The decision in every case depends on what is the most natural way of interpreting the contract in question, or what is customary in the various kinds of business.

Similar remarks apply to the term "Eight days" (German Commercial Code § 359, 2nd paragraph), which is sometimes understood literally, sometimes as being equal to a week.

In default of a special agreement or a manifest supposition, for example resulting from the price — as to the quality of merchandise, the seller has to deliver

Købmandsvarer“ „sædvanlig god Gennemsnitskvalitet og ikke just prima“. Dette er fastslaaet i Praxis, bl. a. ved Højesteretsdom (Sml. t. Hlb. § 360). —

I den tyske Handelslovsbogs § 362, 1ste St. opstilles den Regel, at den Næringsdrivende, hvis Næringsdrift medfører Besorgelse af Forretninger for Andre, er pligtig strax at svare, naar nogen, med hvem han staar i Forretningsforbindelse, retter en Anmodning til ham om at udføre saadanne Forretninger for ham: hans Tavshed gælder som Lofte om at efterkomme Anmodningen. Og videre, at det samme gælder, naar en Næringsdrivende bliver anmodet om at udføre en Forretning af Nogen, overfor hvem han har tilbudt at udføre den Art Forretninger.

Det er antageligt, at lignende Resultater ville blive statuerede i dansk Ret, og da navnlig, hvis den Paagældende ingen rimelig Undskyldning har for sin Undladelse af at svare. Nogen bestemt almindelig Regel i saa Henseende tør dog næppe opstilles.

Med Hensyn til Ordrepapirer (negotiable Papirer — t. Hlb. §§ 363—365) benvises til det ovf. S. 61 bemærkede.

Den i tysk Ret hjemlede Beskyttelse for den godtroende Erhverver af en hvilkensomhelst Losoregenstand (jvf. herved t. Hlb. §§ 366—367) kendes ikke i dansk Ret. Dansk Ret hjemler tværtimod den hidtilværende Ejer en vidtstrakt Ret til, uden at svare nogen Godtgørelse, at vindieere den Losoregenstand, som han har mistet. Det gør i saa Henseende ingen Forandring, om Tingen paa sin Vej til den godtroende Erhverver har passeret en Næringsdrivendes Forretning.

Undtagelse fra denne Vindikationsbeføjelse gøres kun i følgende Tilfælde:

Over Penge, Pengerepræsentativer og Ihændeaverpapirer overhovedet erhverver den godtroende Erhverver strax ved Modtagelsen Ejendomsret, uden Hensyn til om Pengene etc. i Virkeligheden ere f. Ex. stjaalne eller fundne.

Lyder Gælds brevet paa Navn, fortæbes den Rettighed derover, der ikke er paategnet Papiret, til Fordel for den godtroende Erhverver, hvorimod den, hvis Ret er paategnet, bevarer denne sin Ret, selv om en Ubertigtet har forsynet det med falsk Transport. Kun ved Vexler, Checks, Konnossementer og visse Oplagsbeviser, bliver den, der i god Tro og uden grov Uagtsomhed erhverver Papiret fra den, der besidder det med en i Formen lovlig Adkomst, berettiget efter samme og er ikke pligtig at udlevere det til den, hvem det er frakommet.

For Kreditforenings- og andre „offentlige Pengeeffekter“ gælder ifølge en Forordning af 21 Juni 1844 den Regel, at den Besidder, til hvem Obligationen er udstedt, eller paa hvis Navn den er noteret, taber sin Ret til at tilbagesoge Obligationen, naar den er frakommet ham, senere er blevet noteret paa en Andens Navn eller paa Ihændeaveren, og der fra den første efter denne Notering faldende Rentetermin er hengaaet 3 Maaneder, uden at der er gjort Anmeldelse til vedkommende Autoritet om Obligationens Tab.

Videre antages, at Ejendomsret kan erhverves ved Overdragelse fra en Ubertigtet, naar denne — f. Ex. ved en pro forma given skriftlig Erklæring fra den virkelig berettigede eller i øvrigt som Følge af dennes Dispositioner eller visse Akter af en offentlig Myndighed — fremtræder som særlig legitimeret til at raade over den paagældende Ting.

Endelig maa nævnes, at det kgl. Assistenshus, hvilket giver Laan mod Losorepant, fra gammel Tid have det Privilegium, at det ikke behøver at udlevere de af det i god Tro modtagne Panter uden at blive skadesløsholdt.

Hvad Panteret (t. Hlb. § 368) angaar, anerkender dansk Ret ikke blot Underpant i fast Ejendom (hvilket gennem „Tinglæsning“ maa noteres paa vedkommende Ejendoms Folium i „Skøde- og Panteregistrene“) og Haandpant i Løsøre, men ogsaa Underpant i Løsøre.

Dog kan „almindeligt Underpant“, d. v. s. Underpant i hele Pantsætterens nuværende og fremtidige Formue, ikke gives (Konkurslov 25 Marts 1872 § 151). Ej heller kan der — bortset fra en enkelt Undtagelse — gives Underpant i „Samlinger af ensartede eller til et fælles Brug bestemte Ting, der betegnes ved almindelige

“generally good commercial goods”, “generally good average quality and not precisely the very best”. These rules have been established through practice, and notably confirmed by judgments rendered by the Supreme Tribunal (Compare German Commercial Code § 360).

The German Commercial Code § 362, 1st paragraph, lays down the rule that the trader whose trade is to do business on behalf of other persons, is obliged to reply at once when anyone with whom he entertains business relations requests him to carry out such transactions for him: his silence is considered as a promise to comply with the request. And, furthermore, that the same rule applies when a trader is requested to carry out a transaction for some person to whom he has made an offer to carry out that kind of business.

It is probable that similar results will be arrived at in Danish law, and especially if the person in question has no reasonable excuse for not answering. A definite general rule in this respect cannot, however, be laid down.

With regard to papers to order (negotiable securities — German Commercial Code §§ 363—365) we refer to what has been said above, p. 61.

The protection which the German law provides for the *bona fide* transferee of any movable object (compare the German Commercial Code §§ 366—367) is not known to Danish law. On the contrary, Danish law gives the previous owner a wide right to recover the movable object which he has lost, without being liable to pay an indemnity. It does not matter in this respect whether the object while on its way to the *bona fide* transferee has passed through a trader's business or not.

An exception to this right to recover is only made in the following cases:

When there is a question of money, equivalents of money and securities issued to the bearer in general, the *bona fide* transferee obtains the proprietary right immediately on reception, without regard to whether the money etc. has in reality been stolen or found.

If a letter of obligation is issued nominatively a right to it which has not been mentioned on the instrument is lost in favour of the *bona fide* transferee, whereas the person whose right is mentioned on it retains this right even if a non-authorised person has written a forged assignment on the document. Only in the case of bills of exchange, cheques, bills of lading and certain storage certificates, the person who in good faith and without grave carelessness acquires the document from the person who legally possesses it, is authorised according to this document to hold it and is not liable to hand it over to the person from whom it has come.

As regards securities issued by credit associations and other “public securities”, according to an Ordinance of 21st June 1844 the rule obtains that the bearer to whom the bond has been issued, or in whose name it has been recorded, loses his right to recover the bond when he has lost possession of it, and it has subsequently been recorded in another man's name or to the bearer, and when three months have elapsed since the first interest period after the bond was recorded has accrued, without notice having been given to the competent authority of the loss of the bond.

It is furthermore considered that the proprietary right can be acquired through a transfer from an unauthorised person when — for example, by means of a written declaration given *pro forma* by the person who is the real owner, or in general owing to arrangements made by him, or owing to certain documents in the hands of the public authority — he presents himself as particularly competent to possess the object in question.

Finally it must be mentioned that the “Royal Loanhouse”, which grants loans against pledges of movables, has for a long time had the privilege of not being compelled to surrender without indemnity the pledged objects received in good faith by this institution.

As to pledge-right (German Commercial Code § 368) Danish law not only recognises mortgages of real estate (which through “publication carried out by the competent tribunal” must be recorded on the page allotted to the property in question in the “deed and mortgage registers”) and pledges of movables, but also mortgages of movables.

A “general mortgage”, i. e. a mortgage to the full extent of the mortgagor's present and future property, can, however, not be granted (the Bankruptcy Act of 25th March 1872 § 151). Nor — apart from a single exception — can mortgages be granted of “collections of similar objects, or of objects destined for use in com-

Benævnelser“ (Tingsindbegreb), jvf. Konkurslovens § 152. Underpant kan altsaa kun gives i enkeltvis specificerede Ting. Til dets Stiftelse kræves et af Debitor i Overværelse af Notarius publicus eller to Vitterlighedsvidner underskrevet Dokument, der strax skal „tinglæses“ ved den Ret, under hvilken Debitor har sit Hjemsted, og i Tilfælde af Debtors Flytning til en anden Jurisdiktion, strax maa „tinglæses“ i denne.

For at en Underpanthaver i Losore kan søge Fyldestgørelse i sit Pant, maa han først tage Dom over Debitor og derefter gøre „Udlæg“ i Pantet; først saa kan han stille det til Tvangsauktion. — Om Underpant i Skibe gælde særlige Regler, jvf. Skibsregistreringslov 1. Apr. 1892.

For Stiftelsen af Haandpant er ingen særlig Formforskrift foreskrevet, og om „Tinglæsning“ er der ikke Tale. Derimod maa Pantet selvfølgelig overleveres til Panthaveren eller dennes Befuldmægtigede.

Naar Haandpantsætteren ikke opfylder sin Forpligtelse, og Panthaveren derfor vil søge Fyldestgørelse gennem Pantet, kan han gaa to Veje. Han kan enten tage Pantet til Ejendom efter forudgaaet Vurdering af to Mænd, den ene valgt af Pantsætteren, den anden af Panthaveren, eller han kan (jvf. Konkurslovens § 155) sætte Pantet til offentlig Auktion og gøre sig betalt i det udkomne. Forinden Auktionen maa han vidnefast have advaret Debitor derom med 8 Dages Varsel. Hvis Debitor eller hans Bopæl ikke kendes, skal Panthaveren med 14 Dages Varsel have indkaldt ham til at løse Pantet gennem offentlig Bekendtgørelse i „Stats-tidende“. Ved Papirer, der have Kurs paa Kjobenhavns Børs, træder Salg ved en Vexelmægler i Stedet for offentlig Auktion; men Panthaveren vil ogsaa kunne overtage et saadant Papir til Ejendom efter Kursværdien. Er Pantet et almindeligt Gælds-brev, kan Panthaveren overtage det til Ejendom efter dets paalydende Værdi; han kan dog ogsaa indkræve Fordringen hos Skyldneren, hvis den er forfalden, gøre sig betalt i det indkomne og levere Pantsætteren det overskydende.

De her angivne Regler vedrørende Panterettigheder gælde, uden at der goes nogen Forskel mellem, om Pantsætningen vedrører Handelsforretninger eller ej. —

Om Tilbageholdelsesret (Retentionsret, t. Hlb. §§ 369—372) findes hverken forsaavidt Handelsforhold angaar eller i øvrigt almindelige Lovbestemmelser i dansk Ret. Det er derhos givet, at der ikke i dansk Ret i al Almindelighed anerkendes nogen Tilbageholdelsesret, blot fordi Besidderen af en Ting har en Fordring paa den, der fordrer denne udleveret. Paa den anden Side anerkender Teori og Praxis Tilbageholdelsesret for Besidderen af en Ting, saalænge han ikke har faaet visse i Forbindelse med Besiddelsesforholdet staaende Opofrelser eller Tab godtgjort. Dette gælder saaledes, naar Besidderens Fordring og den anden Parts Krav paa at faae Tingen udleveret udspringer af samme Retshandel. Derfor har den, der har faaet en Ting til Reparation, Bearbejdelse, Transport, Bevaring o. lign., Tilbageholdelsesret i Tingen for alle heraf opstaaede Krav. I Lighed hermed er det ogsaa antaget, at Sagførere kunne tilbageholde Sagens Dokumenter til Sikkerhed for Udlæg og vistnok Salær. — Jfr. endvidere Lov om Køb §§ 36, 39 og 57.

Videre antages Retentionsret at tilkomme den, der uden særlig Aftale anvender Arbejde eller Bekostning paa en andens Ting under saadanne Omstændigheder, at han derved erhverver Krav paa at holdes skadesløs af Ejeren.

Om den, der lider Skade ved en fremmed Ting, som han enten allerede besidder, eller som den kommer i Besiddelse af ved selve den skadegørende Begivenhed, har Retentionsret, til Skaden er erstattet, er omtvistet.

Retentionsretten antages ikke i sig selv at give Hjemmel til en Tvangsrealisation af den tilbageholdte Ting. Men har Besidderen en retskraftig Fordring paa Tingens Ejers, kan han tage Dom over ham og i Henhold dertil gøre Udlæg i Tingen.



mon, which are designated by general terms" (unities of objects); see the Bankruptcy Act § 152. A mortgage can consequently only be granted of single objects which are specified. In order that a mortgage may be granted, a document signed by the debtor in the presence of a public notary or two witnesses is necessary, which document must at once be proclaimed in public by the Tribunal of the district where the debtor has his domicile, and in the case of the debtor moving to another jurisdiction, the document must forthwith be proclaimed there.

In order that the mortgagee of movable objects may obtain payment on his mortgage, he must in the first instance obtain a judgment against the debtor, and then effect a "seizure" of the mortgaged object; not till then is he allowed to sell it by a compulsory auction. — To mortgages on ships special rules apply; see the Act concerning the registration of ships of 1st April 1892.

As regards pledges of movables no special rule obtains with regard to their form, and there is no question of proclamation in public by a tribunal. On the other hand, the pledged object must of course be handed over to the pledgee or his authorised agent.

When the pledgor does not fulfil his obligation, and the pledge-holder, consequently, desires to obtain payment on the pledge, he can do this in two ways. He may either take possession of the pledge after a previous valuation made by two men, of whom one is chosen by the pledgor, the other by the pledge-holder, or he may (compare the Bankruptcy Act § 155) sell the pledge by public auction and obtain payment out of the proceeds. It is incumbent on him to inform the debtor in the presence of witnesses eight days beforehand of the auction which is going to take place. If the debtor or his residence is not known to him, the pledge-holder must, fourteen days beforehand, have called upon him to redeem the pledge by means of a publication in the "State Gazette". In the case of negotiable securities which are offered for sale at the Exchange of Copenhagen, the sale takes place by means of a broker instead of by public auction; but the pledge-holder is also entitled to appropriate the security according to its value at the time of the operation. If the pledge is an ordinary note of hand, the pledge-holder may appropriate it according to the value specified in the document; he may, however, also recover his claim from the debtor if it is due for payment, obtain payment out of the proceeds and hand over the surplus to the pledgor.

The rules concerning pledge-rights above indicated apply without any distinction being made as to whether the pledge arises out of commercial transactions or not.

Danish law provides no general rules with regard to the right to withhold property (the right of retention, German Commercial Code § 369—372) either as regards commercial transactions or as regards other transactions. It is therefore a matter of course that Danish law in general recognises no right of retention merely because the possessor of an object has a claim on the person who demands that the object in question shall be handed over to him. On the other hand, theory and practice recognise the right of retention by the possessor of an object, so long as he has not been indemnified for his sacrifices made or losses sustained in connection with the possession of such object. This rule, for instance, applies when the claim of the possessor and the claim of the other party to have the object in question delivered arise out of the same legal transaction. Consequently, the person who has obtained an object in order to repair, modify, transport, store it etc., has a right to withhold the object in respect of all the claims which may have arisen out of these operations. Similarly, it is also conceded that solicitors are entitled to withhold the documents appertaining to a cause as security for expenses incurred and probably also for fees. — See also the Purchase and Sale Act §§ 36, 39 and 57.

Further, a person who without special agreement employs his labour in favour of or spends his money on another person's objects under circumstances entitling him to claim an indemnity from the owner, is considered to have a right to retain such objects.

It is doubtful whether a person sustaining damage caused by the objects of another person which he either already possesses or which he acquires through the occurrence causing the damage itself, has the right of retaining such objects until the damage has been made good.

The right of retention in itself is not considered as implying the right of compulsory realisation of the retained object. But if the possessor has a legal claim, which is in force, on the owner of the object, he can obtain a judgment against

Hvis imidlertid Tingen er udsat for at fordærves, eller naar Ulejligheden og Bekostningen ved at opbevare den vilde blive uforholdsmæssig stor, maa han — i alt Fald naar Ejeren ikke efter Opfordring inden en rimelig Tid indløser Tingen — være berettiget til at bortsælge den paa Ejers Vegne og tilbageholde Kobesummen til Sikkerhed. Han kan herved, hvis hans Krav er et Pengekrav, skaffe sig Fyldestgørelse gennem Modregning.

### c) Køb og Salg.

Paa Grundlag af et af en dansk- norsk- svensk Kommission udarbejdet Forslag er udkommet følgende danske

## Lov om Køb<sup>1)</sup> af 6te April 1906.

### Almindelige Bestemmelser.

**Art. 1.** Denne Lovs Bestemmelser komme kun til Anvendelse, for saa vidt ikke andet er udtrykkelig aftalt eller maa anses for indeholdt i Aftalen eller følger af Handelsbrug eller anden Sædvane.

Loven gælder ikke for Køb af fast Ejendom.

<sup>1)</sup> Om Hovedreglerne for Tilbud og Accept se ovf. S. 57. Udbud af Varer til Publikum gennem Avertissementer, Udsendelse af Prislistes, Udstillen af Varer med paahæftede Priser o. lign. kan ikke betragtes som et egentligt Tilbud, men kun som Meddelelser „uden Forbindlighed“. Naar der paa Grundlag af saadanne mere almindelig holdte Prospekter eller lign. kommer en Handel i Stand, kan man, juridisk set, i Almindelighed heller ikke tillægge de i samme indeholdte Lovprisninger af Værdien nogen væsentlig Vægt. Først naar Henvendelsen antager en mere speciel, personlig Karakter f. Ex. ved nøjagtig Angivelse af Kvantitet og Kvalitet med Tilføjelse af, at man afventer Ordre eller lign., kan Modtageren efter Omstændighederne være berettiget til heri at se et bestemt Tilbud og altsaa ved ufortøvet Indsendelse af Ordre fastholde Tilbyderen. Er Bestilling gjort i Henhold til et Katalogs nærmere Angivelse af Varen, og Bestillingen modtaget uden Forbehold, er Katalogens Angivelser selvfølgelig bindende. En uopfordret Tilsendelse af selve Varen maa, naar den da ikke skyldes en kendelig Fejltagelse, opfattes som et bestemt Tilbud, og hvis der mellem den, til hvem en Vare saaledes sendes uden Bestilling, og Vareafsenderen bestaar en fast Forretningsforbindelse, maa Adressaten behørig reklamere, hvis han ikke vil beholde de tilsendte Varer. En Købekontrakt kan ikke betragtes som endelig afsluttet, før der foreligger Enighed om alle væsentlige Punkter, altsaa om Varens Art, Beskaffenhed og Mængde, om Prisen og øvrige Betalingsvilkår og om Leveringstiden. Dog behøves ikke altid en udtrykkelig Aftale om alle disse Punkter. I mange Tilfælde ville almindelig antagne deklaratoriske Regler, Handelssædvaner eller Slutninger fra tidligere Handler mellem Parterne give det nødvendige Supplement, dog selvfølgelig kun med Hensyn til uomtalte Punkter, men ikke med Hensyn til saadanne, om hvilke der har været en Uenighed, som Forhandlingerne ikke ere naaede ud over. Det skal herved bemærkes, at den, der en Gang har givet et bestemt Afslag, ikke ved Tavshed overfor Modpartens nye Forslag kan betragtes som havende accepteret disse. Hvorledes Afgjørelsen skal være, naar begge Parter betragte Kontrakten som afsluttet, men det senere viser sig, at de have en forskellig Opfattelse af Kontraktens Vilkår, maa bero paa Omstændighederne. Et Responsum af 1901 udtaler, at, naar en Handlende ved Afgivelse af en Bestilling har modtaget en Ordrekopi uden at gøre Indsigelse mod samme, er han efter almindelig Handelskutyne pligtig at modtage Varen i Overensstemmelse med Ordrekopien. — Det kan stille sig tvivlsomt, mellem hvilke Parter Kontrakten i Virkeligheden maa anses for afsluttet. Den, der rekvirerer Varer uden at tilkendegive, at han foretager Bestillingen paa en Andens Vegne, maa selv hæfte for Betalingen. Den, der rekvirerer Varer til en Anden, saaledes at Varerne direkte tilstilles denne Anden, kan derimod ordentligvis ikke være pligtig at betale dem; men han maa — som overhovedet den, der gør gældende at være Fuldmægtig — paa Forlangende kunne godtgøre, at han virkelig har Fuldmagt. Staar det som tvivlsomt, i hvis Navn Bestillingen er sket, eller til hvem det Bestilte i Virkeligheden er leveret, maa det nærmest være Bestillerens Sag at godtgøre, at Medkontrahenten vidste, at Leveringen skete til Tredjemand. Den, der bestiller Varer hos et Firma, men derefter faar de bestilte Varer tilstillede med Faktura fra et andet Firma og uden Indsigelse modtager dem, maa derved blive pligtig at betale direkte til den, der saaledes er den egentlige Sælger. — Naar der til Kontraktens Afslutning er benyttet Mellemand (Fuldmægtig, Bud, Telegraf osv.) og denne forvansker Partens Mening, bør Retsstillingen først og fremmest paa, om Fuldmagten havde en for Medkontrahenten kendelig særlig Existens (som f. Ex. hvor der foreligger en ham overleveret skriftlig Fuldmagt eller en til Handelsregistret anmeldt Prokura). I saa Fald bindes nemlig Parten ved, hvad Fuldmægtigen erklærer indenfor Grænserne af den saaledes foreliggende Fuldmagt. Hvor derimod Fuldmagten ikke saaledes fremtræder med særlig Existens, antages det for det første, at forsætligt Forvanskninger fra den benyttede Persons Side ikke forbinder Parten og ligesaa lidt Fejltagelser, som Modparten har set eller burde kunne se. Men selv hvor Fejltagelsen er ukendelig for Modparten, er man i dansk Ret tilbøjelig til at antage, at Fejltagelsen ikke er bindende for den, der benytter Mellemanden, medmindre den da kan føres tilbage til mangl-

him and in accordance with this seize the object. If, however, the object is liable to be damaged, or if the trouble and expense of storing it would be disproportionately considerable, he is — at any rate when the owner on request does not redeem the object within a reasonable time — entitled to dispose of it on behalf of the owner and to retain the amount of the sale as a security. In this manner, if his claim is a claim to payment in money, he may obtain satisfaction by means of a set-off.

### c) Purchase and Sale.

On the basis of a project drafted by a Danish-Norwegian-Swedish Committee the following Danish law has been enacted:

#### The Purchase and Sale<sup>1)</sup> Act of 6 April 1906.

##### General provisions of the Act.

Art. 1. The provisions of this Act only apply when nothing else has been expressly stipulated, or must be considered as implied in the agreement, or results from commercial or other custom.

The Act does not apply to the sale of immovable property.

<sup>1)</sup> Concerning the main rules as to offer and acceptance see above p. 57. Offering goods to the public by means of advertisement, sending of price lists, display of goods with prices attached to them etc., cannot be considered as an offer properly so called, but only as communications "without obligation". When on the basis of such advertisements drafted in general terms etc., a bargain is concluded, no great importance can generally be attached, from a legal point of view, to the praising of the goods which such advertisements etc. contain. Only when the offer presents itself in a more special and personal form, for example by means of an exact indication of quantity and quality with an addition to the effect that an order is expected etc., may the receiver, according to circumstances, be entitled to see in this a definite offer and consequently bind the offeror by immediately sending him his orders. If an order has been given according to the special statements as to the goods contained in a catalogue, and the order has been received without reservation, the statements of the catalogue are of course binding on the parties. The sending of merchandise without previous order must, when it is not due to an obvious error, be considered as a definite offer, and if the person to whom a quantity of goods has been sent in this manner and the sender of the goods entertain regular business relations, the person to whom the goods are sent must duly protest if he does not want to keep the goods sent to him. A contract of sale cannot be considered as finally concluded until an agreement on all essential points has been arrived at, consequently, as to the kind of goods required, their quality and quantity, as to the price and other conditions of payment and as to the time of delivery. Not always, however, is an express agreement on all these points required. In many cases the rules of interpretation generally received, commercial usages or conclusions drawn from previous transactions between the parties, give the necessary supplement, of course, however, only with regard to points which have not been mentioned, and not with regard to points as to which there has been a disagreement not yet settled by negotiations. In this connection it must be observed that a person who has once given a definite refusal, cannot by reason of silence as to new offers made to him by the proposer, be considered as having accepted these. It depends on circumstances what is to be decided when the two parties consider a contract as concluded, but when subsequently it appears that they hold different points of view with regard to the understanding of the stipulations of the agreement. A *responsum* of 1901 says that when a trader on giving an order has received a copy of such order without making any objection to it, he is according to the general commercial custom compelled to receive the goods in accordance with the copy of the order. — Sometimes doubts may arise as to the parties between whom a contract in reality has been concluded. A person ordering goods without declaring that he is ordering them on behalf of another person, is himself liable to pay for the goods. A person ordering goods on behalf of another person on the terms that the goods are to be sent directly to this other person, is on the contrary not as a rule liable to pay for the goods; but it is incumbent on him — as in general on a person who claims to be an agent — to prove if required that he actually has authority. If it is doubtful in whose name an order has been given, or to whom the goods ordered have in reality been delivered, it is in the first instance incumbent on the person ordering to prove that the other contracting party knew that the goods were to be delivered to a third person. A person who orders goods from one firm and thereupon obtains the goods ordered together with an invoice sent to him from another firm, and without objecting accepts such goods, by so doing becomes liable to make payment direct to the person who in reality is the seller. — If when concluding a contract an intermediary has been used (agent, messenger, telegraph etc.), and the intermediary inexactly transmits the words of the party, the legal situation in the first place depends on whether there was a special power existing which was known to the other contracting party (as for example where there is a written authority which has been handed over to him, or a proxy which has been declared in the commercial register). In such cases the principal is bound by what the agent declares within the limits of the available authority. Where

2. Bestilling af Genstande, som først skulle tilvirkes, anses i denne Lov som Køb, saafremt det for Tilvirkningen fornødne Stof skal ydes af den, der har paa- taget sig Tilvirkningen. Loven gælder dog ikke for Opførelse af Bygning eller andet Anlæg paa fast Ejendom.

Hvad der i denne Lov er bestemt om Køb, finder tilsvarende Anvendelse paa Bytte.

3. Ved Køb af Genstande, bestemte efter Art, forstaas i denne Lov ikke alene Køb af en vis Mængde af en angiven Art Genstande, men ogsaa Køb af en vis Mængde af et angivet Parti.

4. Ved Handelskøb forstaas i denne Lov Køb, som indgaas mellem Hand- lende i eller for deres Bedrift.

Som Handlende anses herved enhver, der gør sig til Bedrift at afhænde dertil indkøbte Varer, at drive Veksellerer- eller Bankforretning, Forsikringsvirksom- hed, Kommissionshandel, Forlagsvirksomhed, Apotek, Beværtning, Haandværk eller Fabrik, at overtage Udførelse af Bygnings- eller Anlægsarbejder eller at befordre Personer, Gods eller Meddelelser. Dog anses ikke som Handlende den, som uden anden Medhjælp end sin Ægtefælle, sine Born under 15 Aar og sit Hustyende driver Beværtning, Haandværk, Befordringsvirksomhed eller saadan ringe Handel, hvortil ikke kræves særlig Adkomst, eller hvortil Borgerskab udstedes uden Betaling.

#### Om Bestemmelse af Købesummen.

5. Er Køb sluttet, men intet aftalt om Købesummens Størrelse, har Køberen at betale, hvad Sælgeren fordrer, for saa vidt det ikke kan anses for ubilligt<sup>1)</sup>.

6. Er i Handelskøb Regning (Faktura eller Nota) tilstillet Køberen, og gør han ikke, saasntart ske kan, Indsigelse mod den i Regningen anførte Pris, er han pligtig at betale denne, medmindre lavere Pris oplyses at være aftalt, eller Regningen er aabenbart urimelig<sup>2)</sup>.

7. Skal Købesummen beregnes efter Tal, Maal eller Vægt, bliver Mængden paa det Tidspunkt, da Faren for Salgsgenstandens hændelige Undergang gaar over paa Køberen, at lægge til Grund for Beregningen.

8. Skal Købesummen beregnes efter Varens Vægt, antages Indpakningens Vægt (Taravægten) at skulle fradrages.

#### Om Stedet, hvor Salgsgenstanden skal leveres (Leveringsstedet).<sup>3)</sup>

9. Sælgeren har at levere Salgsgenstanden paa det Sted, hvor han ved Købets Afslutning havde sin Bolig. Drev han paa dette Tidspunkt Forretning, og stod Salget i Forbindelse dermed, skal Levering ske paa Forretningsstedet.

fuld Instruktion eller anden saadan Førsonnelighed hos Fuldmagtsgiveren. Hvad særlig Fejl- telegraferinger angaar, kan herefter Afsenderen ikke anses bunden ved det Indhold, som Tele- grammer faa ved Forvanskning undervejs.

<sup>1)</sup> Er der i Kontrakten fastsat en bestemt Pris, gælder den i Reglen tillige for den Ind- pakning og Udstyrelse, hvori Varen almindeligvis fremtræder (f. Ex. Kasser til Cigarer), men ikke uden særlig Aftale for den Emballage, der kræves til Varens Forsendelse.

<sup>2)</sup> En lignende Reklamationspligt maa ogsaa antages at paahvile ham med Hensyn til alle andre Angivelser i Fakturaen, som efter Fakturaens Benyttelse i Handelslivet have deres naturlige Plads i denne. Hertil kan saaledes bl. a. høre Angivelse af Tid og Maade, hvorpaa Købesummen skal betales, Kurs, hvorefter den skal beregnes, samt hvilke Accessorier til Købesummen — saasom Betaling for Emballage, Fragt og Forsikringspremie — Køberen skal betale. Reklamationspligten maa dog være betinget af, at Angivelsen i Fakturaen er optaget paa en saadan Plads og paa en saadan Maade, at den let og hurtig findes, og ikke f. Ex. er stukket ind paa et Sted, hvor den ikke hører hjemme eller imellem en Mængde Angivelser af ligegyldigt Indhold.

<sup>3)</sup> Hvor Sælgeren efter Sædvane eller Aftale besørger Afsendelsen for Køberens Regning, er han naturligvis denne ansvarlig for, at Afsendelsen sker paa forsvarlig Maade (altsaa særlig

2. The ordering of such objects as have not yet been manufactured, is in this Act considered as a purchase, if the raw materials necessary for manufacturing the objects in question are to be furnished by the person who is going to manufacture them. The Act, however, does not apply to the erection of buildings or other works of construction on land.

The regulations of this Act with regard to sale also apply to exchange.

3. By the sale of objects determined according to their species, is in this Act meant not only the sale of a certain quantity of a definite kind of objects, but also the sale of a certain quantity of a definite mass of goods.

4. By a commercial sale is in this Act meant any sale which is concluded between traders in the course or in the pursuance of their trade.

Any person is considered as a trader who makes it his profession to dispose of goods purchased for this purpose, to carry on a business as a money changer, to engage in banking, to carry on an insurance business, a commission trade, a publishing business, a chemist's shop, to keep a refreshment room, to carry on a handicraft or a factory, to undertake the erection of buildings or works of construction, or to transport persons or goods or to carry messages. A person is not, however, considered as a trader who without other assistance than that of his wife, his children under 15 years of age and his domestic servants, carries on a catering business, exercises a handicraft, or carries on a transport business or such minor trade as does not require a special license, or for which a license is issued free of charge.

#### How the price is fixed.

5. If a sale has been concluded, but nothing decided as to the price, the purchaser has to pay what the seller demands, in so far as this amount cannot be considered exorbitant<sup>1)</sup>.

6. If on the conclusion of a commercial sale, an account (invoice or debit note) is sent to the purchaser, and if he does not, as soon as possible, object to the price stated in the account, he is liable to pay such price, unless it is proved that a lower price has been stipulated, or the account is obviously exaggerated<sup>2)</sup>.

7. If the price is calculated according to number, measure or weight, such quantity is considered as the basis of the calculation as exists at the moment when the risk of accidental loss which is connected with the object sold passes to the purchaser.

8. If the price is calculated according to the weight of the merchandise, the weight of the packing (tare) is supposed to be deducted.

The place where the thing sold is to be delivered (the place of delivery).<sup>3)</sup>

9. The seller has to deliver the thing sold at the place where he had his residence when the sale was concluded. If at that time he carried on a business and the sale was connected therewith, the delivery shall take place where the business is.

on the contrary no such special power exists, it may in the first instance be assumed that deliberate falsifications on the part of the person employed are not binding on the principal, nor errors which the other contracting party has seen or ought to have seen. But even where the error cannot be seen by the other contracting party, Danish law is disposed to admit that the error is not binding on the person who employs the intermediary, unless such error can be traced back to insufficient instructions or other similar negligence on the part of the principal. Consequently, as regards telegraphic errors in particular, the sender cannot be considered as being bound by the contents of telegrams which have been altered in transmission.

1) If a definite price has been stipulated in the contract, such price as a rule also applies to the packing and fitting-up which generally accompany the goods (for example cigar boxes), but not without special agreement to the packing necessary for sending the goods.

2) A similar obligation to object is also supposed to be incumbent on him with regard to other statements made in the invoice, which owing to the manner in which this document is being used in commercial life, naturally form part of it. Amongst such statements are those bearing on the time and manner in which the price shall be paid, the rate of exchange at which it is to be calculated, and what accessories of the price — as for example the payment for packing, freight and insurance premium — the purchaser is to pay. The obligation to object, however, must be based on the condition that the statement in the invoice has been made at such a place and in such a manner in it as to be easily and quickly seen, and, for example, has not been made at a place in the invoice to which it does not belong, or mixed up with a number of details of no particular importance.

3) Where the seller according to custom or agreement is charged with the transmission of the goods in question for the account of the purchaser, he is of course responsible to the latter

Befandt Genstanden sig ved Købets Afslutning paa et andet Sted end ovenfor nævnt, og vare Parterne eller burde de være vidende derom, anses dette som Leveringssted.

10. Skal Genstanden af Sælgeren forsendes fra et Sted til et andet for der at overgives i Køberens Besiddelse, anses Levering for sket, naar Genstanden er overgivet til en Fragtfører, som har paataget sig Forsendelsen fra vedkommende Sted, eller den, hvis Afsendelsen sker med Skib, er bragt indenfor Skibssiden.

11. Skal Sælgeren besørge Genstanden sendt til noget inden Pladsens Grænser beliggende Sted, anses Levering ikke at være sket, forinden Genstanden er kommen i Køberens Besiddelse.

#### Om Tiden for Aftalens Opfyldelse.<sup>1)</sup>

12. Er Tid for Kobesummens Betaling eller Salgsgegenstandens Levering ikke bestemt, og fremgaar det ikke af Omstændighederne, at Opfyldelse skal ske snarest muligt, skal den ske ved Paakrav<sup>2)</sup>.

13. Er et Tidsrum fastsat for Leveringen, har Sælgeren Ret til inden for dette Grænser at vælge Tidspunktet for Leveringen, medmindre det fremgaar af Omstændighederne, at Spillerummet er fastsat i Køberens Interesse<sup>3)</sup>.

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ved Benyttelse af et paalideligt Transportmiddel) og maa ikke uden Grund fravige Køberens Instruktioner i saa Henseende. Det er derhos i Reglen Afsenderens Pligt samtidig med Afsendelsen at tilstille Køberen Faktura samt Meddelelse om, naar og hvorledes Forsendelsen har fundet Sted, og, hvis det er ad Søvejen, at give betimelig Underretning om Skibets og Skipperens Navn.

1) Denno kan ikke blot være udtrykkelig aftalt, men ogsaa fremgaa af Handelssædvane. Saaledes er det f. Ex. en almindelig udbredt Sædvane ved Bestilling fra Handlende hos Producenter, at Sælgeren strax eller dog snarest muligt skal afsende det bestilte. Hvor saaledes Opfyldelsestidspunktet er udtrykkelig eller stiltiende vedtaget, og uden Hensyn til, om Tidsbestemmelsen er behæftet med en vis Ubestemthed („strax“, „snarest muligt“, „ved første naabne Vande“, „i Løbet af Foraaret“ og lign.), er Opfattelsen i dansk Røtepraxis den, at Opfyldelse skal ske uden Afventning af nogen Mindelse („Paakrav“) fra Medkontrahenten. Hvis i Handelsforhold Sælgeren leverer eller tilbyder Køberen Salgsgegenstanden forinden den aftalte Tid, kan Køberen afvise den, saa at den ligger for Sælgerens Regning og Risiko, dog saaledes at der efter Omstændighederne paahviler Køberen en vis Omsorgspligt med Hensyn til den. En vis Klasse Handler, de saakaldte Fixforretninger, ere karakteristiske derved, at det efter Kontrakten kommer an paa Opfyldelse netop nøjagtigt ved et fastsat Tidspunkt og navnlig ikke senere. Den naturlige Forstaaelse af Kontrakten antages her at være den, at Ydelsen i Moratilfælde strax og ubetinget omdannes til en Pengeforpligtelse, der, naar ikke større Tab oplyses, omfatter Differencen mellem Prisen paa Leveringstiden og den aftalte Kobesum, uden at Køberen kan forbeholde sig fremtidig Naturalopfyldelse. I hvert Fald maa Betingelsen for, at Køberen kan forlange saadan, være, at han strax efter det fastsatte Tidspunkts Indtræden meddeler Sælgeren, at han fastholder sit Krav paa Naturalopfyldelse. Ret til Tilbage træden fra Kontrakten maa der ved Fixforretninger altid tilkomme den Part, hvis Modpart ikke nøjagtigt overholder Leveringstidspunktet, jfr. § 21, 2, Stk. Til Fixforretninger kan ikke henregnes enhver Kontrakt, der fastslaaer en bestemt Leveringstid, men der maa yderligere foreligge en udtrykkelig eller stiltiende Vedtagelse af, at Forretningen staar og falder med Tidspunktets Overholdelse. Denno kan være udtrykt gennem en særlig Klausul eller ved Tilføjeelse af Ord som fix, præcis eller lign. eller fremgaa af Omstændighederne, men dog kun forsaavidt disse klart og tydeligt tale for saadan Forstaaelse af Kontrakten.

2) Der maa dog levnes den handlepligtige Part den til Opfyldelsen nødvendige Frist, saaledes at han, naar den endelige Opfyldelse kræver Foretagelsen af visse forberedende Skridt, først kommer i Mora, naar han ikke strax efter Paakravet sætter disse i Gang.

3) Dette sidste vil ikke sjældent være Tilfælde, saaledes f. Ex. ved frit ombord Salg, hvor Køberen skal skaffe Skib. Selvfølgelig vil det i Tilfælde af sidstnævnte Art ofte paahvile Køberen at give Sælgeren Underretning nogen Tid i Forvejen om det trufne Valg af Tidspunktet.

If the object was kept at a place other than the one mentioned above when the sale was concluded, and if the parties knew or ought to have known of it, this is considered as the place of delivery.

10. If the object of the sale shall be sent from one place to another in order to be delivered to the purchaser there, the delivery is considered as effected when the object is handed over to a carrier who has undertaken to transport it from the place in question, or if the object is sent by ship, when it has been put on board the ship.

11. If the seller is charged to send the object to a spot situated within the boundaries of the place, the delivery is not considered as effected until the object has come into the purchaser's possession.

#### The time for execution of the contract.<sup>1)</sup>

12. If the time for payment of the price or for the delivery of the object sold has not been determined, and if it does not result from the circumstances that the contract shall be executed as soon as possible, it must be executed on demand<sup>2)</sup>.

13. If a certain period of time has been fixed within which delivery is to take place, the seller has a right to choose the time of delivery within this period, unless it appears from the circumstances that the delay of the delivery was fixed in favour of the purchaser<sup>3)</sup>.

for the transmission being effected in a reasonable manner (especially as to the use of a proper means of transport), and must not without reason depart from the instructions given to him by the purchaser with regard to this matter. As a rule it is also incumbent on the sender, simultaneously with the despatch of the goods, to send an invoice to the purchaser, at the same time informing him when and how the despatch of the goods has been effected, and if the goods have been sent by vessel, to give him information in due time with regard to the name of the ship and the shipmaster.

1) It is not necessary that this time should be expressly stipulated, but it is also sufficient that such time should result from commercial custom. It is for example a widely spread custom that, on traders sending their orders to the producer, the seller forthwith, or at any rate as soon as possible, sends the ordered goods. Consequently, where the time for effecting an order has expressly or tacitly been stipulated, and without regard to whether a certain want of precision is attached to that time ("immediately", "as soon as possible", "at the first open waters", "in the course of the spring" etc.), the opinion according to Danish legal practice prevails that the order in question must be effected without waiting for any further admonition ("demand") from the other contracting party. If in commercial relations the seller delivers or offers the purchaser the object sold before the stipulated date, the purchaser is entitled to reject it, so that it remains for the account and at the risk of the seller, but it is, however, according to circumstances incumbent on the purchaser to take charge of the object to some extent. A certain class of transactions, the so-called "fixed businesses", are peculiar in so far as according to the contract the execution ought to take place exactly at a stipulated date and certainly not later. The natural way in which to interpret the contract in question here is supposed to be, that the promised performance in the case of delay is forthwith and unconditionally transformed into an obligation to pay an amount of money which, when no considerable loss is ascertained, comprises the difference between the price obtaining at the time for delivery and the stipulated contract price, without the purchaser having the right to reserve for himself the performance of the contract in kind. At any rate, the condition of the purchaser being entitled to claim such performance must be that immediately on the expiration of the stipulated time he informs the seller that he maintains his claim to have his order fulfilled in kind. The right of withdrawing from a contract in the case of fixed businesses is always available to the party whose co-contractor does not exactly observe the stipulated time of the delivery; see § 21, 2nd paragraph. Fixed businesses do not comprise all contracts which stipulate a definite time of delivery, but only when in addition there is an express or tacit agreement to the effect that the transaction stands or falls with the observance of such time. This agreement may be expressed by means of a special clause, or by adding "fixed" "precisely" etc. or may result from circumstances, but only in so far as these clearly and distinctly imply such an interpretation of the agreement.

2) To the person, however, on whom it is incumbent to act, the necessary time for carrying out the fulfilment must be given, so that, when the final fulfilment necessitates certain preparatory steps, he will not be responsible for the delay until, immediately on a request having been made with such object in view, he fails to carry out such preparations.

3) This latter alternative obtains not infrequently, for example, in the case of a sale stipulated free on board, where the purchaser is to provide the ship. Of course in cases of the last mentioned category it is frequently incumbent on the purchaser to inform the seller some time beforehand of his choice made of the time of delivery.

### Om Retten til at kræve Ydelse mod Ydelse.

14. Er der ikke givet Henstand fra nogen af Siderne, er Sælgeren ikke pligtig at levere Salgsgegenstanden, medmindre Købesummen samtidig betales, og Køberen ikke pligtig at betale Købesummen, medmindre Salgsgegenstanden samtidig stilles til hans Raadighed.

15. Skal Genstanden forsendes fra Leveringsstedet, kan Sælgeren dog ikke i Medfør af Bestemmelsen i foregaaende Paragraf undlade at afsende den, men kan hindre, at den overgives i Køberens Besiddelse, saa længe Købesummen ikke er betalt.

16. Benyttes i Handelskøb ved Genstandens Forsendelse fra Leveringsstedet til Bestemmelsesstedet Konnossement eller Fragtbrev af saadan Beskaffenhed, at Sælgeren efter dets Udlevering til Køberen ikke kan raade over Genstanden, skal Købesummen betales mod Udlevering af det paagældende Dokument overensstemmende med Reglerne i § 71.

### Om Faren (Risikoen) for Salgsgegenstanden.<sup>1)</sup>

17. Sælgeren bærer Faren for Salgsgegenstandens hændelige Undergang eller Forringelse, indtil Levering har fundet Sted (jfr. §§ 9—11).

Angaar Købet en bestemt Genstand, som skal hentes af Køberen, og er Tiden inde, da den ifølge Aftalen kan hentes, samt Genstanden holdes rede, bærer dog Køberen Faren og maa saaledes betale Købesummen, selv om Genstanden hændelig er gaaet til Grunde eller forringet.

### Om Udbytte af Salgsgegenstanden.

18. Udbytte, som vindes af Salgsgegenstanden inden Leveringstiden, tilkommer Sælgeren, med mindre det med Grund kunde paaregnes først at ville falde senere.

Udbytte, som vindes efter Leveringstiden, tilfalder Køberen, medmindre det med Grund kunde paaregnes allerede at ville falde forinden.

19. Køb af Aktie omfatter det Udbytte, som ikke var forfaldent paa den Tid, da Købet sluttedes.

Er eller bliver der til Aktien knyttet Ret til at tegne ny Aktie, nyder Køberen godt heraf<sup>2)</sup>.

20. Køb af rentebærende skriftlig Fordring omfatter de ved Købet eller, hvis senere Levering skal finde Sted, de ved Leveringstiden paaløbne, men endnu ikke forfaldne Renter. Fremgaar det ikke af Omstændighederne, at Fordringen er solgt som usikker, bliver det til Renterne svarende Beløb at betale i Tillæg til Købesummen og samtidig med denne.

### Om Forsinkelse fra Sælgerens Side.

21. Leveres Salgsgegenstanden ikke i rette Tid, og skyldes dette ikke Køberens Forhold eller en hændelig Begivenhed, for hvilken han bærer Faren, har Køberen Valget mellem at forlange Genstanden leveret og at hæve Købet.

<sup>1)</sup> Sælgeren vil ofte være forpligtet til at sende Køberen Underretning om Tidspunktet for Salgsgegenstandens Afsendelse, eller om, at den er rede til Afhentning, bl. a. for at Køberen kan blive i Stand til betimelig at sørge for Genstandens Forsikring. Navnlig er det hjemlet ved gældende Sædvane i de egentlige Handelsforhold, at Sælgeren er pligtig at tilstille Køberen Faktura, der melder Varernes Afsendelse, samtidig med Afsendelsen eller dog 24 Timer derefter. Undlader Sælgeren i saa Fald at sende Køberen Underretning, bliver han erstatningspligtig for den derved forårsagede Skade. Det forstaaer sig derhos af sig selv, at Sælgeren staaer til Ansvar for Skade, som han efter Risikoens Overgang paa Køberen paafører Tingen ved tilregneligt, retstridigt Forhold, medens Sælgeren paa den anden Side i alle Tilfælde maa være fritaget for at bære Risikoens ved Salgsgegenstandens hændelige Undergang, naar det er Køberens Forhold, der har bevirket, at den ikke bliver leveret i rette Tid.

<sup>2)</sup> Udløber Tegningsfristen, inden Leveringstiden kommer, maa Køberen, hvis han ønsker Tegningsretten benyttet til sin Fordel, give Sælgeren Meddelelse derom inden Fristens Udløb, hvorhos han paa Sælgerens Forlangende maa være pligtig at stille til dennes Raadighed ved Aktiens Tegning det Beløb, som da skal betales, samt at stille betryggende Sikkerhed for senere Indbetalinger.



### The right to claim performance against performance.

14. If no period of delay has been granted by either party, the seller is not liable to deliver the object of the sale, unless the price is paid at the same time, and the purchaser is not liable to pay the price, unless the object of the sale at the same time is placed at his disposal.

15. If the object in question is to be despatched from the place for delivery, the seller may not, however, omit to send it in virtue of the rules of the preceding Article, but can prevent it from coming into the possession of the purchaser so long as the price remains unpaid.

16. If, in the case of a commercial sale, on forwarding the object from the place for delivery to the place of its destination, a bill of lading or way bill of such a character is used as to prevent the seller from disposing of the object from the moment the bill of lading has been handed over to the purchaser, the price shall be paid against the delivery of the document in question, according to the provisions of § 71.

### The danger (risk) to which the object sold may be exposed.<sup>1)</sup>

17. The seller bears the risk of the accidental loss or deterioration of the object sold until delivery has taken place (see §§ 9—11).

If, however, the sale concerns a specific object which ought to be taken away by the purchaser, and if the time has come when according to the agreement it may be taken away, and the object is kept ready, the purchaser bears the risk and must consequently pay the price even when the object has been accidentally lost or deteriorated.

### The products of the object sold.

18. The profit which is produced from the object sold up to the time of its delivery belongs to the seller, unless there was reason to assume that the profit would not result till after delivery.

The profit which is produced after delivery belongs to the purchaser, unless there was reason to assume that it would result before delivery.

19. The sale of a share includes the profit which was not due at the time when the sale was concluded.

If the right of subscribing for a fresh share belongs to or will belong to a share, the purchaser reaps the benefit of such right<sup>2)</sup>.

20. The sale of a chose in action in writing bearing interest comprises the interest which at the time of the sale or, if delivery shall take place subsequently, which at the time of delivery is accruing but not yet due. If it does not result from the circumstances that the chose in action has been sold as doubtful, the amount corresponding to the interest will have to be paid as an additional payment to the price and at the same time as the price.

### Delay on the part of the seller.

21. If the object sold is not delivered at the stipulated time, and if the delay is not due to the conduct of the purchaser or some accidental occurrence of which he takes the risk, the purchaser can either demand to have the object delivered or cancel the bargain.

<sup>1)</sup> It is frequently incumbent on the seller to inform the purchaser of the time when the object sold will be sent off, or of the fact that it is ready to be taken away, notably in order that the purchaser may be in a position to insure the object in time. Especially it has been established through custom obtaining in commercial transactions properly so-called, that it is incumbent on the seller to send the purchaser an invoice informing him of the despatch of the goods, simultaneously with the sending of them or at any rate within 24 hours thereof. If in such case the seller omits to inform the purchaser, he will be liable to pay compensation for the damage caused by such omission. Furthermore, it is obvious that the seller is responsible for the damage which, after the passing of the risk to the purchaser, he causes the object sold to suffer by his deliberate and illegal conduct, whereas on the other hand the seller in any case is exempted from bearing the risk which may be brought about by the accidental loss of the object sold, when it is by reason of the purchaser's conduct that it has not been delivered at the stipulated time.

<sup>2)</sup> If the period fixed for subscription expires before the time of delivery arrives, the purchaser, if he desires to exercise the right of subscription in his favour, is bound to inform the seller of this within the expiration of the period; furthermore at the request of the seller he is bound, when subscribing for the share, to place at the latter's disposal the amount which is then due for payment, and to give sufficient security for later payments.

Var Forsinkelsen eller maatte den af Sælgeren forudsættes at være af uvæsentlig Betydning for Køberen, kan denne dog ikke hæve Købet, medmindre han har betinget sig Opfyldelse nojagtig til bestemt Tid.

I Handelskøb anses enhver Forsinkelse for væsentlig, medmindre det alene er en ringe Del af det solgte, som er forsinket<sup>1)</sup>).

22. Skal Sælgeren levere efterhaanden, og finder Forsinkelse Sted med en enkelt Levering, kan Køberen i Medfør af foregaaende Paragraf alene hæve Købet, for saa vidt angaar denne Levering. Dog kan han ogsaa hæve Købet for senere Leveringers Vedkommende, saafremt Gentagelse af Forsinkelsen maa ventes, eller endog hæve Købet i dets Helted, saafremt dette er begrundet i Sammenhængen mellem Leveringerne.

23. Angaar Købet en bestemt Genstand, og bliver denne ikke leveret i rette Tid, har Sælgeren at svare Skadeserstatning, medmindre det oplyses, at Forsinkelsen ikke kan tilregnes ham<sup>2)</sup>).

24. Ved Køb af Genstande, bestemte efter Art, er Sælgeren, selv om Forsinkelsen ikke kan tilregnes ham, pligtig at svare Skadeserstatning, medmindre han har forbeholdt sig Fritagelse derfor, eller Muligheden af at opfylde Aftalen maa anses for udelukket ved Omstændigheder, der ikke ere af saadan Beskaffenhed, at Sælgeren ved Købets Afslutning burde have taget dem i Betragtning, saasom ved hændelig Undergang af alle Genstande af den Art eller det Parti, Købet angaar, ved Krig, Indførselsforbud eller lignende.

25. Hæves et Køb, og skal Erstatning svares i Henhold til § 23 eller § 24, bliver denne i Mangel af Bevis for, at anden Skade er lidt, at fastsætte til det Beløb, hvormed Prisen for Genstande af samme Art og Godhed som de solgte paa Leveringstiden overstiger Købesummen. Foretager Køberen uden ugrundet Ophold Dækningskøb paa forsvarligt Sted, hvor der er Marked for Varen, ved autoriseret Mægler, der er underrettet om Købets Art, kan Sælgeren ikke rejse Indsigelse imod, at Købesummen for den saaledes indkøbte Vare betragtes som Genstandens Pris<sup>3)</sup>).

1) Hvad der saaledes gælder om Forsinkelse med selve Leveringen, maa ordentligvis lige-saa vel gælde om andet Forhold fra Sælgerens Side, der har samme Betydning for Køberen, f. Ex. Sælgerens Hindring af Salggenstandens Afgivelse til Køberen, efter at „Levering“ ved et Forsendelseskøb har fundet Sted, Sælgerens Forsinkelse af Transporten efter Leveringen, hans Nægtelse af Adgang for Køberen til at anstille en vis Undersøgelse af Varen, forinden Købesummen betales, osv., saavel som om Forhold, der paa Forhaand vise, at en Forsinkelse med Leveringen vil finde Sted, f. Ex. Sælgerens Undladelse af rettidig at give Køberen en Paa-visning af Salgsgenstanden, som han efter Aftalen er pligtig at give, og lign.

2) Denne Regel maa i Overensstemmelse med de gældende Regler om Erstatningsansvar i Kontraktsforhold forstaaes saaledes, at visse Undskyldningsgrunde for Forsinkelsen — som f. Ex. Forseelser af Sælgerens Folk eller andre Personer, som han benytter til Opfyldelsen, eller økonomiske Vanskeligheder, der gøre det umuligt for Sælgeren at levere den solgte Genstand i rette Tid o. a. lign. — udelukkes fra at komme i Betragtning, selv om de i det enkelte Tilfælde give Oplysning om, at Forsinkelsen er Skyldneren personlig utilregnelig. Hvad Omfanget af Erstatningspligten angaar, gælder som Hovedregel, at den omfatter den forurettede Parts hele individuelle Tab, — supra p. 60 — forsaavidt det i egentlig Forstand er foraarsaget ved den Erstatningspligtiges retsstridige Forhold og derhos ikke maatte fremstille sig for denne som en ganske usædvanlig og unaturlig Følge af Retsbrudet eller endelig er forskyldt af den forurettede selv.

3) Leveringstidens Pris gælder som angivet kun som et Formødnings-Grundlag ved Skadens Beregning. Det staar altsaa aabent saavel for Køberen at bevise, at han i det foreliggende Tilfælde har lidt et større Tab, som ogsaa for Sælgeren at bevise, at Tabet for Køberen har været mindre. Saaledes have Domstolene, f. Ex. naar det har været Køberen umuligt at skaffe sig andre lignende Varer i rette Tid, saa at han i Stedet har maattet anskaffe en noget dyrere Vare, tilkendt Køberen en tilsvarende større Godtgørelse, ligesom de, hvor Køberen har haft Grund til at afvente Opfyldelse udover den egentlige Leveringstid, have ansat Differensen i Forhold til Prisen paa et senere Tidspunkt. Har Køberen bevislig allerede solgt Varerne videre, vil den herved stiplede Salgspris let blive lagt til Grund, naar den da ikke i usædvanlig Grad afviger fra den almindelige Markedspris.

If the delay is of minor importance to the purchaser or if the seller is entitled to suppose it to be so, the purchaser cannot, however, cancel the purchase unless he has stipulated that delivery shall take place exactly at the specified time.

In commercial sales, every delay is considered as essential, unless only a small quantity of the goods sold has been delayed<sup>1</sup>).

22. If the seller has agreed to deliver the goods by instalments, and if one delivery is delayed, the purchaser in pursuance of the preceding Article, can only cancel the purchase in so far as this delivery is concerned. He may, however, also cancel the purchase in regard to later deliveries, if a repetition of the delay is to be expected, or even cancel the entire purchase, if such cancellation is based on the manner in which the various deliveries as a whole have been effected.

23. If a sale concerns a definite object, and this is not delivered at the stipulated time, the seller must pay compensation, unless it is established that the delay has not been caused by him<sup>2</sup>).

24. In the case of a sale of objects determined according to their species, the seller, even if the delay is not imputable to him, is liable to pay compensation, unless he has stipulated for an exemption from liability, or the possibility of carrying out the contract must be considered as excluded by circumstances which are not of such a nature as to induce the seller to consider them at the time when the bargain is made, as, for instance, in the case of the accidental loss of all the objects of the kind or the parcel which the sale concerns, in the case of war, prohibition of importation, etc.

25. If a sale is cancelled, and compensation has to be paid according to § 23 or § 24, the compensation, in default of proof that other damage has been sustained, shall be estimated at the amount by which the value of objects of the same kind and quality as those sold exceeds the sale price at the time for delivery. If the purchaser without unjustifiable delay concludes an urgent bargain at a convenient place where there is a market for the goods in question, and if he does this by means of an authorised broker who is informed of the nature of the purchase, the seller cannot object to the price of such urgently purchased merchandise being considered as the value of the goods in question<sup>3</sup>).

1) The rule which applies to the delay of the delivery itself, in general also applies to all other acts on the part of the seller which are of equally great importance to the purchaser, for example when the seller prevents the object sold from being handed over to the purchaser after "delivery" has taken place in the case of a sale for despatch from the place of delivery, or delays the transport when delivery has taken place or refuses to give the purchaser the permission to examine the goods to some extent before the price is paid etc., as well as to circumstances making it obvious beforehand that delivery will be delayed, for example, the omission on the part of the seller to show the object sold to the purchaser in due time, when according to the agreement he is compelled to do so, etc.

2) This rule, according to the rules applicable to the liability for damages in matters of contract, must be understood to the effect that certain reasons for excusing delay — as for example errors made by the seller's employees or other persons whom he employs in carrying out the order in question, or economic difficulties making it impossible for the seller to deliver the object sold at the stipulated time etc. — are excluded from consideration, even if in the particular case in question they substantiate that the delay has not been caused by the seller personally. As to the extent of the obligation to pay damages, the principal rule applies that it comprises the entire individual loss sustained by the party who has suffered the damage. — above p. 60 — in so far as it has been actually caused by wrongful acts on the part of the person who is liable to pay the damages, and in so far as it ought not to be considered by him as quite an unusual and unnatural consequence of the violation of the law, or finally has not been caused by the person himself who has sustained the damage.

3) The price obtaining at the time of delivery is considered as being indicated only as a probable basis for the estimate of the damage. The purchaser consequently is at liberty to prove that in the case in question he has suffered a more considerable loss, and the seller is also at liberty to prove that the loss sustained by the purchaser has been a less considerable one. For this reason the tribunals have, for example, when it has been impossible for the purchaser to obtain other similar goods at the stipulated time, the consequence being that he has been compelled to procure somewhat dearer goods in their place, awarded the purchaser a corresponding compensation which is higher, and also in cases where the purchaser has had reason to expect fulfilment after the stipulated time of delivery, they have estimated the difference in proportion to the price obtaining at the later period. When it can be proved that the purchaser has already sold the goods in question to a third person, the price stipulated at such sale is ordinarily taken as a basis, if it does not to an unusual degree deviate from the current price of the day.

**26.** Er Leveringstiden forløben, og har Levering ikke fundet Sted, maa Køberen, om han vil fastholde Købet, paa Forespørgsel fra Sælgerens Side uden ugrundet Ophold give Meddelelse derom. Undlader han dette, taber han sin Ret til at kræve Levering. Det samme gælder, selv om han ikke har modtaget nogen Forespørgsel, dersom han ikke inden rimelig Tid meddeler, at han vil fastholde Købet.

**27.** Har Levering fundet Sted efter Leveringstidens Udlob, maa Køberen, naar det ved Genstandens Fremkomst eller Underretning fra Sælgeren viser sig, at Leveringen er sket for sent, i Handelskøb straks og ellers uden ugrundet Ophold meddele Sælgeren, at han vil paaberaabe sig Forsinkelsen. Undlader han dette, kan han ikke senere paaberaabe sig Forsinkelsen. Vil Køberen benytte sin Ret til at hæve Købet, maa han under denne Rets Fortabelse uden ugrundet Ophold meddele Sælgeren dette.

#### Om Forsinkelse fra Køberens Side.

**28.** Betales Købesummen ikke i rette Tid, eller træffer Køberen ikke i rette Tid Foranstaltning, hvorpaa Købesummens Betaling beror<sup>1)</sup>, har Sælgeren Valget imellem at fastholde og at hæve Købet. Er Forsinkelsen af uvæsentlig Betydning, kan Købet dog ikke hæves. I Handelskøb anses enhver Forsinkelse for væsentlig.

Er den solgte Genstand allerede overgivet til Køberen, kan Sælgeren ikke hæve Købet, medmindre han enten maa anses at have taget Forbehold<sup>2)</sup> i saa Henseende, eller Genstanden afvises af Køberen.

**29.** Skal Sælgeren levere efterhaanden, og skal Betaling erlægges særskilt for hver Levering, er Sælgeren, naar der med Hensyn til Betalingen for en enkelt Levering indtræder saadan Forsinkelse, som efter § 28, første Stykke, anses for væsentlig, berettiget til at hæve Købet for de følgende Leveringers Vedkommende, medmindre der ikke er nogen Grund til at befrygte Gentagelse af Forsinkelsen. Dette gælder, selv om Sælgeren efter § 28, andet Stykke, er afskaaren fra at hæve Købet med Hensyn til den Levering, for hvis Vedkommende Købesummens Betaling er bleven forsinket.

**30.** Hæver Sælgeren i Medfør af de to foregaaende Paragrafer Købet, har han Krav paa Skadeserstatning efter de Regler, som ere givne i § 24. Erstatningen bliver i Mangel af Bevis for, at anden Skade er lidt, at fastsætte til det Beløb, hvormed Købesummen overstiger Prisen for Genstande af samme Art og Godhed som de solgte paa den Tid, da Forsinkelsen indtraadte.

Foretages Salg af Genstanden ved autoriseret Mægler som i § 25 anvist, kan Køberen ikke rejse Indsigelse imod, at den indvundne Købesum betragtes som Genstandens Pris.

**31.** Er Købesummen ikke betalt, uagtet Betalingstiden er forløben, eller har Køberen undladt at træffe saadan Foranstaltning, som i § 28 er nævnt, og er Salgs-genstanden ikke overgivet til Køberen, har Sælgeren, naar han vil fastholde Købet, paa Forespørgsel fra Køberens Side uden ugrundet Ophold at give Meddelelse derom. Undlader han dette, taber han sin Ret til at fastholde Købet. Det samme gælder, selv om han ikke har modtaget nogen Forespørgsel, dersom han ikke inden rimelig Tid meddeler, at han vil fastholde Købet.

**32.** Betales Købesummen for sent, eller træffer Køberen for sent saadan Foranstaltning, som i § 28 er nævnt, maa Sælgeren, hvis han paa Grund af For-

<sup>1)</sup> F. Ex. Afgivelse af Vexelaccept, Aabning af Rembours, Stillelse af Sikkerhed o. lign. eller efter Omstændighederne rettidig Afhentelse af Salgs-genstanden, nemlig forsaavidt dette maa ventes at medføre, at Købesummen ikke bliver betalt i rette Tid.

<sup>2)</sup> Et Forbehold om Købets Tilbagegang i Tilfælde af Købesummens Ikke-Betaling antages i Almindelighed at ligge i Aftale om kontant Betaling. Ved det saakaldte Specifikationskøb, hvor Køberen skal give Sælgeren nærmere Meddelelse om Mål, Form o. lign., maa Sælgeren ordentligvis være berettiget til at hæve Købet og kræve Erstatning, naar Køberen ikke i rette Tid sender Specifikation, i hvert Fald, naar Køberen efter forudgaaet skriftlig Opfordring ikke omgaaende sender Specifikationen. Derimod kan der ordentligvis ikke tilkomme Sælgeren nogen Beføjelse til selv at træffe det Valg, der i Kontrakten er forbeholdt Køberen.

26. If the time for delivery has arrived, and delivery has not taken place, the purchaser, if he desires to maintain the bargain, must, at the request of the seller, inform him of the non-delivery without unjustifiable delay. If he omits to do so, he loses his right to claim delivery. The same rule holds good, even if he has received no request, if he does not within reasonable time inform the seller that he intends to maintain the bargain.

27. If delivery has taken place after the expiration of the stipulated time, the purchaser, if on the arrival of the object in question, or through information given by the seller, it is found that delivery has been effected too late, must, in commercial sales immediately, and otherwise without unjustifiable delay, inform the seller of his intention to take advantage of the delay. If he omits to do so, he cannot subsequently take advantage thereof. If the purchaser desires to avail himself of his right to cancel the purchase, he must, at the risk of losing this right, inform the seller of his intention to do so without unjustifiable delay.

#### Delay on the part of purchaser.

28. If the price is not paid in due time, or the purchaser does not in due time make such arrangements as may bring about<sup>1)</sup> the payment of the price, the seller can either maintain or cancel the bargain. If the delay, however, is of minor importance, the sale must not be cancelled. In the case of commercial sales, every delay is considered essential.

If the object sold has already been delivered to the purchaser, the seller must not cancel the purchase, unless either he must be supposed to have made a reservation<sup>2)</sup> in this respect, or the object in question has been rejected by the purchaser.

29. If the seller is to deliver the goods successively, and payment is to be made separately for each delivery, the seller, when such delay occurs with regard to the payment of a single delivery as according to § 28, first paragraph, is considered as being essential, is entitled to cancel the purchase as regards the succeeding deliveries, unless there is no reason to fear that the delay will occur again. This rule applies, even when the seller according to § 28, second paragraph, is debarred from cancelling the bargain in so far as that delivery is concerned the payment of the price of which has been delayed.

30. If the seller in pursuance of the provisions of the two preceding Articles cancels the sale, he is entitled to claim damages according to the rules given in § 24. The damages, in default of proof that other loss has been incurred, are fixed at the amount by which the price exceeds the value of objects of the same kind and quality as those which were sold, at the time when the delay occurred.

If the sale of the object in question is effected by means of an authorised broker as indicated in § 25, the purchaser is not entitled to object to the price obtained being considered as the value of the object.

31. If the price has not been paid, although the time stipulated for payment has expired, or the purchaser has omitted to make such an arrangement as is mentioned in § 28, and the object of the sale has not been delivered to the purchaser, the seller, if he wants to maintain the purchase, shall inform the purchaser at his request of his intention to do so without unreasonable delay. If he omits to do so, he loses his right to maintain the bargain. The same rule applies, even if he has received no request, if he does not give notice within reasonable time that he intends to maintain the bargain.

32. If the price is paid too late, or if the purchaser makes such arrangement as is mentioned in § 28 too late, the seller, if on account of the delay he wants to

<sup>1)</sup> For example, by giving acceptance to a bill of exchange, opening a reimbursement, giving security etc., or, according to circumstances, taking away the object sold in due time, i. e. when such occurrence must be supposed to have as a consequence that the price will not be paid at the stipulated time.

<sup>2)</sup> A reservation as to the cancellation of the sale in the case of non-payment of the price is in general supposed to result from the stipulation regarding payment in cash. When a so-called *specification sale* has been concluded, where the purchaser has to give the seller detailed information as to measure, shape, etc., the seller, as a rule, is entitled to cancel the sale and claim damages when the purchaser does not send the required specification in due time, at any rate when the purchaser, after a previous request in writing, does not send the specification by return of post. On the other hand, the seller has not as a rule the right to undertake the selection which according to the contract is reserved for the purchaser.

sinkelsen vil hæve Købet, give Køberen Meddelelse derom, i Handelskob straks og ellers uden ugrundet Ophold. Undlader han dette, taber han sin Ret til at hæve Købet.

33. Undlader Køberen at afhente eller modtage Salgsgenstanden i rette Tid, eller har hans Forhold iøvrigt bevirket, at den ikke i rette Tid er bleven overgivet i hans Besiddelse, har Sælgeren for Køberens Regning at drage Omsorg for Genstanden, indtil Forsinkelsen ophører, eller Sælgeren benytter den Ret til at hæve Købet, som efter § 28 maatte tilkomme ham. Er Genstanden forsendt og kommen til Bestemmelsesstedet, gælder dette dog kun, naar der her findes nogen, som paa Sælgerens Vegne kan tage den i Besiddelse, og saadant kan ske uden væsentlig Omkostning eller Ulempe.

34. Kan Sælgeren ikke uden væsentlig Omkostning eller Ulempe vedblive med at sørge for Genstanden, eller raader Køberen ikke over den inden rimelig Tid, efter at han dertil er bleven opfordret, har Sælgeren Ret til at sælge den for Køberens Regning. Forinden Salg finder Sted, har Sælgeren saavidt muligt at give Køberen betimeligt Varsel. Foregaar Salget enten ved autoriseret Mægler, som er underrettet om Salgets Art, paa forsvarligt Sted, hvor der er Marked for Varen, eller ved en forsvarlig bekendtgjort og afholdt Auktion, kan Køberen ikke gøre nogen Indsigelse mod den opnaaede Pris. Kan Salg ikke finde Sted, eller er det aabenbart, at de med et Salg forbundne Omkostninger ikke ville kunne dækkes af Salgssummen, er Sælgeren berettiget til at skaffe Genstanden bort.

35. Er Genstanden udsat for hurtig Fordærvelse, eller vil dens Bevaring medføre uforholdsmæssig store Omkostninger, er Sælgeren med den Begrænsning, som følger af Slutningsbestemmelsen i foregaaende Paragraf, pligtig at sælge den. Kan Salg paa nogen af de i samme Paragraf omhandlede Maader ikke uden Skade oppebies, skal Genstanden sælges, som bedst ske kan.

36. Har Forsinkelse fra Køberens Side paaført Sælgeren Udgifter til Genstandens Bevaring eller anden forøget Omkostning, kan Sælgeren fordrø Erstatning og til Sikkerhed for denne holde Genstanden tilbage.

37. Bærer Sælgeren Faren for Salgsgenstanden, men Køberens Forhold har bevirket, at den ikke bliver leveret i rette Tid, overføres Faren paa Køberen, ved Køb af Genstande, bestemte efter Art, dog ikke forinden bestemte Genstande ere udskilte for ham<sup>1)</sup>.

#### Om Rente af Købesummen.

38. I Handelskob har Køberen, naar der er fastsat en bestemt Betalingstid, og denne oversiddes, derefter at svare Rente af Købesummen med 6 pCt. aarlig. Er en bestemt Betalingstid ikke fastsat, har Køberen at svare nævnte Rente fra den Dag, da Levering har fundet Sted, eller, om Levering paa Grund af Køberens Forhold er bleven forsinket, fra den Dag, da Forsinkelsen indtraadte.

I andre Køb har Køberen, hvad enten der er fastsat en bestemt Betalingstid eller ej, at svare 5 pCt. aarlig Rente af Købesummen fra den Dag, da Betaling skulde have været erlagt. Modtager Køberen Regning fra Sælgeren paa et Tidspunkt, da Købesummen kan kræves betalt, paaløber Renten fra Regningens Modtagelse, uden at yderligere Paakrav er fornødent.

Bestemmelserne i Lov af 6. April 1855 § 3 om Forhøjelse af Renter fra den Dag, Fordringshaveren søger sin Ret, komme ikke til Anvendelse med Hensyn til de foran hjemlede Renter.

<sup>1)</sup> Herved man dog bemærkes, at det er en i Handelsforhold meget udbredt Sædvane, at Risikoen først overgaaar paa Køberen ved Sælgerens Afsendelse af en Meddelelse om, at Udskilning har fundet Sted, efter Omstændighederne endog først ved Køberens Modtagelse af saadan Meddelelse, idet Køberen først da bliver i Stand til at dække sin Risiko gennem Forsikring. Udenfor Forhold, for hvilke en Sædvane af dette Indhold er gældende, paahviler det dernæst ofte Sælgeren at sende Køberen saadan Meddelelse som en Pligt, hvis Tilsidesættelse medfører Erstatningsansvar for det Tab, som Køberen lider derved, at han ikke er blevet sat i Kundskab om Udskilningen.

cancel the bargain, must inform the purchaser of his intention to do so, in the case of commercial sales forthwith, and in other cases without unreasonable delay. If he omits to give such notice, he loses his right to cancel the bargain.

33. If the purchaser omits to take away or accept the object of the sale at the stipulated time, or he has in other respects been the cause of the object not being delivered to him in due time, the seller has to take care of the object at the expense of the purchaser until the delay ceases, or the seller exercises the right to cancel the bargain which is given to him according to § 28. Where the object has been despatched and has arrived at its place of destination, this rule only applies if there is some one present at this place who can take possession of the object on behalf of the seller, and if this can be effected without considerable cost or trouble.

34. If the seller cannot without considerable cost or trouble go on taking care of the object, or if the purchaser does not within reasonable time take possession of it after having been requested to do so, the seller is entitled to sell it for the account of the purchaser. Before the sale takes place, the seller must, as far as possible, inform the purchaser thereof sufficiently long beforehand. If the sale is effected, either by means of an authorised broker, who is informed of the nature of the sale, at a proper place where there is a market for the goods in question, or by an auction which has been duly published and is properly carried out, the purchaser is not entitled to make any objection with regard to the price obtained. If the sale cannot be effected, or if it is obvious that the expenses connected with a sale by auction, cannot be paid out of the proceeds of the sale, the seller is entitled to dispose of the object in some other manner.

35. If the object sold is liable to deteriorate quickly, or if the cost of keeping it is disproportionately heavy, the seller, with the limitation arising from the last clause of the preceding Article, is bound to sell it. If a sale to be effected in any of the ways mentioned in the same Article, cannot be delayed without damage, the object shall be sold in the most profitable manner possible.

36. If the delay brought about by the purchaser has caused the seller to incur expenses for keeping the object sold, or other additional expenses, the seller is entitled to claim an indemnity and as security for this to retain the object.

37. If the seller bears the risk connected with the object of the sale, but in consequence of the conduct of the purchaser it is not delivered at the stipulated time, the risk devolves on the purchaser, in the case of a sale of objects which are determined according to their species, however, not until definite objects have been appropriated to him<sup>1)</sup>.

#### Interest on the price.

38. In the case of commercial sales, where a definite date of payment has been stipulated, and has expired, the purchaser after this date has to pay interest on the price at the rate of 6 per cent. per annum. If a definite date of payment has not been stipulated, the purchaser has to pay the said interest from the day on which the delivery of the goods in question has taken place, or, if the delivery on account of the conduct of the purchaser has been delayed, from the date on which the delay began.

In the case of other sales, whether a definite day of payment has been stipulated or not, the purchaser must pay interest at the rate of 5 per cent. on the price from the day on which payment ought to have been made. If the purchaser receives an invoice from the seller at a time when the price may be asked in payment, the interest runs from the moment when the invoice is received, without any further request being necessary.

The provisions of the Act of 6th April 1855 § 3 concerning the increase of the rate of interest from the day on which the creditor claims his right, do not apply to the rates of interest above authorised.

<sup>1)</sup> On this point, however, it must be observed that there is a widely spread custom in commercial relations that the risk does not devolve on the purchaser till the seller has sent information concerning the selection of the goods, and under certain circumstances, even till the purchaser has received such information, as the purchaser is not till then in a position to cover his risk by insurance. Outside relations in which a custom of this nature obtains, it is often incumbent on the seller to send the purchaser such information, and if he omits to do so, he is liable to pay compensation for the loss which the purchaser suffers owing to the fact that he has not been informed of the selection of the goods.

### Om Køberens manglende Betalingsevne.

39. Kommer Køberen efter Købets Afslutning under Konkurs eller aabnes der Forhandling om Tvangsakkord for ham, har Sælgeren, skønt der er givet Henstand med Betalingen, Ret til at holde Salgsgegenstanden tilbage eller, hvis den er forsendt fra Leveringsstedet, at hindre dens Overgivelse til Boet, indtil betryggende Sikkerhed stilles for Kobesummens Betaling til Forfaldstid. Er Tiden for Leveringen kommen, og Boet ikke paa Sælgerens Opfordring stiller saadan Sikkerhed, kan han hæve Købet.

Disse Bestemmelser komme ogsaa til Anvendelse, hvis efter Købets Afslutning Køberen ved Eksekution er funden at mangle Midler til at betale sin Gæld, eller han, om han er Handlende, har standset sine Betalinger, eller hans Formuesforhold iøvrigt vise sig at være saadanne, at han maa antages at ville være ude af Stand til at betale Kobesummen, naar den forfalder.

40. Er Køberen kommen under Konkurs, og er hverken Tiden for Leveringen eller Tiden for Kobesummens Betaling kommen, kan Sælgeren opfordre Boet til at erklære, om det vil indtræde i Købet, og hvis Boet da ikke snarest muligt og senest inden 3 Uger eller, om Tiden for Leveringen eller Betalingen indtræffer forinden, da til dette Tidspunkt erklærer at ville indtræde i Købet, kan Sælgeren hæve Købet.

41. Er Salgsgegenstanden efter Konkursens Begyndelse overgivet til Konkursboet, og er Kobesummen ikke betalt, kan Sælgeren kræve Genstanden tilbage, medmindre Boet erklærer at ville indtræde i Købet og betaler Kobesummen eller paa Opfordring stiller Sikkerhed for dens Betaling til Forfaldstid. Har Boet afhændet Genstanden eller iøvrigt for egen Regning raadet saaledes over den, at den ikke kan tilbageleveres i væsentlig uforandret Stand, har Sælgeren Ret til at anse Boet som indtraadt i Købet.

### Om Mangler ved Salgsgegenstanden.<sup>1)</sup>

42. Angaar Købet en bestemt Genstand, og lider denne af en Mangel, kan Køberen hæve Købet eller kræve et forholdsmæssigt Afslag i Kobesummen. Maa Manglen anses som uvæsentlig, er Køberen dog ikke berettiget til at hæve Købet, medmindre Sælgeren har handlet svigagtigt.

Savnede Genstanden ved Købets Afslutning Egenskaber, som maa anses tilsikrede, eller er Manglen efter Købets Indgaaelse forårsaget ved Sælgerens Forsømmelse, eller har Sælgeren handlet svigagtigt, kan Køberen kræve Skadeserstatning:

43. Ved Køb af Genstande, bestemte efter Art, kan Køberen, saafremt den leverede Genstand lider af en Mangel, hæve Købet eller kræve Omlevering eller fordre et forholdsmæssigt Afslag i Kobesummen.

Maa Manglen anses som uvæsentlig, kan Købet dog ikke haves eller Omlevering fordres, medmindre Sælgeren har handlet svigagtigt eller har kendt Manglen paa et saadant Tidspunkt, at han uden urimelig Opofrelse havde kunnet skaffe mangelfri Genstand.

Sælgeren er, selv om han er uden Skyld, pligtig at betale Skadeserstatning, dog saaledes, at Bestemmelserne i § 24 finde tilsvarende Anvendelse.

44. Ved Afgørelsen af, om Salgsgegenstanden lider af en Mangel, bliver, for saa vidt Manglen ikke er hidført ved Sælgerens Forsømmelse, det Tidspunkt at tage i Betragtning, da Faren gik over paa Køberen.

<sup>1)</sup> Om Mangler ved Salgsgegenstanden tales der, naar dens Tilstand gør den uskikket eller i ikke uvæsentlig Grad mindre egnet til dens sædvanlige Brug eller til den Brug, som Køberen efter Aftalen maa forudsættes at ville gøre af den. Særlige Aftaler eller Forudsætninger mellem Køber og Sælger kunne saaledes baade udvide og indskrænke Mangelbegrebets Omraade. Selv om umiddelbart en Ting er solgt „som den er eller forefindes“, „som den falder“, eller med lignende Forbehold, vil det dog normalt være en naturlig Forudsætning for Aftalens forbindende Kraft for Køberen, at Sælgeren ikke svigagtigt har skjult Manglen. I Mangel af nærmere Aftale eller en i Prisen tydelig liggende Forudsætning skal Sælgeren efter Retspraxis levere „administrative gode Købmandsvarer“, „sædvanlig god Gennemsnitskvalitet og ikke just prima“, „gode, sunde Handelsvarer“. Lyder Kontrakten paa enten den ene eller den anden af to Varesorter, maa, hvor ikke særlige Omstændigheder tyde paa andet, Vulget være Sælgerens.



### The insolvency of the purchaser.

39. If the purchaser after the conclusion of the sale becomes bankrupt, or if negotiations with a view to obtaining a composition for him are opened, the seller, although a period has been granted within which to make payment, has a right to retain the object sold, or, if such object has been sent from the place of delivery, to prevent it from being handed over to the estate, until sufficient security has been given for the payment of the price at the stipulated date of payment. If the day for delivery has arrived, and the estate does not at the request of the seller give such security, he is entitled to cancel the bargain.

These rules also apply if, after the conclusion of the sale, the purchaser through an execution has been found not to have sufficient means to pay his debt, or if he, when he is a trader, has suspended payments, or his financial position in general proves to be such as to cause a belief that he will be unable to pay the price when it becomes due.

40. If the purchaser has become bankrupt, and neither the time for delivery nor the time for payment of the price has arrived, the seller may call upon the estate to declare whether it is willing to undertake the purchase on its own behalf, and if then the estate does not as soon as possible and at the latest within three weeks, or if the time for delivery or payment occurs before this date, does not then, declare itself willing to undertake the bargain on its own behalf, the seller is entitled to cancel the bargain.

41. If the object of the sale has been handed over to the bankruptcy estate after the commencement of the bankruptcy, and if the price has not been paid, the seller is entitled to claim that the object shall be returned to him, unless the estate declares itself willing to conclude the bargain on its own behalf and pays the price, or on request gives security for the payment being made at the stipulated date. If the estate has sold the object, or otherwise for its own account has disposed of it in such a manner as to prevent it being returned in an essentially unaltered condition, the seller has a right to consider the estate as having concluded the bargain on its own behalf.

### Defects of the object sold.<sup>1)</sup>

42. If the sale concerns a specific object, and it has a defect, the purchaser may cancel the sale or claim a proportionate reduction in the price. If, however, the defect must be considered as non-essential, the purchaser is not entitled to cancel the sale, unless the seller has acted fraudulently.

If the object at the conclusion of the sale lacked qualities which must be considered as guaranteed, or if the defect after the conclusion of the sale has been caused by negligence on the part of the seller, or if the seller has acted fraudulently, the purchaser may claim damages.

43. In the case of a sale of objects determined according to their species, the purchaser, if the delivered object has a defect, may cancel the sale or demand fresh goods or claim a proportionate reduction in the price.

If however, the defect must be considered as non-essential, the sale cannot be cancelled, nor fresh goods be demanded, unless the seller has acted fraudulently or knew of the defect at a time when without unreasonable sacrifice he could have procured objects free of defects.

The seller, even if he is not to blame, is liable to pay damages; the rules of § 24, however, apply in a corresponding manner.

44. When deciding whether the object sold has a defect, the state in which the object was found when the risk passed to the purchaser will have to be considered, provided the defect has not been caused by negligence on the part of the seller.

<sup>1)</sup> The defects of the subject matter of the sale come into consideration when the object sold is in such a state as to be unfit or essentially less fit for its ordinary use or for the use which the purchaser according to agreement must be supposed to intend to make of it. Special agreements or understandings between purchaser and seller may consequently widen or limit the scope of the term "defective". Even when an object has been sold "as it is or is found", "as it may turn out", or with similar reservations, it is however a matter of course that the agreement cannot be binding on the purchaser when the seller has fraudulently concealed the defect. In default of a special agreement, or of a supposition obviously involved in the price, the seller according to legal practice has to deliver "generally good merchandise", "generally good average quality and not precisely the best", "good, wholesome commercial goods". If the contract stipulates for delivery of one or the other of two qualities of merchandise, the seller, where no special circumstances indicate a contrary intention, is entitled to choose.

45. Bestemmelserne i § 25 om Skadeserstatningens Beregning komme ogsaa til Anvendelse, naar Købet hæves paa Grund af Mangel ved Genstanden.

46. Skal Sælgeren levere efterhaanden, og er en enkelt Levering mangelfuld, kan Køberen i Medfør af §§ 42 og 43 alene hæve Købet, for saa vidt angaar denne Levering. Dog kan han ogsaa hæve Købet for senere Leveringers Vedkommende, saafremt det maa ventes, at ogsaa disse ville blive mangelfulde, eller endog hæve Købet i dets Helhed, saafremt dette er begrundet i Sammenhængen mellem Leveringerne.

47. Har Køberen for Købets Afslutning undersøgt Salgsgenstanden eller uden skellig Grund undladt at efterkomme Sælgerens Opfordring til at undersøge den, eller er der for Købets Afslutning givet ham Lejlighed til at undersøge en Prøve<sup>1)</sup> af Salgsgenstanden, kan han ikke paaberaabe sig Mangler, der ved saadan Undersøgelse burde være opdagede af ham, medmindre Sælgeren har handlet svigagtigt.

48. Sker Salg ved Auktion, kan Køberen ikke paaberaabe sig, at Genstanden lider af nogen Mangel, medmindre Genstanden ikke svarer til den Betegnelse, under hvilken den er solgt, eller Sælgeren har handlet svigagtigt. Hvad her er foreskrevet, gælder dog ikke, naar en Handlende sælger sine Varer ved Auktion.

49. Tilbyder Sælgeren at afhjælpe en Mangel eller at foretage Omlevering, maa Køberen dermed lade sig nøje, hvis det kan ske inden Udlobet af den Tid, da han er pligtig at afvente Levering (jfr. § 21), og det aabenbart ikke kan medføre Omkostning eller Ulempe for ham.

Køberens Ret til Erstatning berøres ikke af denne Bestemmelse.

50. Hvad i denne Lov er bestemt om Mangler ved Salgsgenstanden finder tilsvarende Anvendelse, hvor den leverede Mængde er for ringe, saafremt Køberen maa gaa ud fra, at det, som er leveret, er ment at skulle tjene som fuldstændig Opfyldelse af Aftalen. Køberen kan i dette Tilfælde ikke i Medfør af § 43 fordre Omlevering men kan i Stedet herfor kræve efterleveret, hvad der mangler, hvad enten dette udgør en større eller mindre Del af det, som skulde leveres<sup>2)</sup>.

51. I Handelskøb har Køberen, naar Salgsgenstanden er leveret, eller en aftalt Udfaldsprøve<sup>3)</sup> er kommen ham i Hænde, at foretage saadan Undersøgelse, som ordentlig Forretningsbrug kræver. Skal Genstanden forsendes fra et Sted til et andet, er Køberen dog ikke pligtig at undersøge den, førend den paa Bestemmelsesstedet er stillet saaledes til hans Raadighed, at han i Følge § 56 vilde være pligtig at drage Omsorg for den.

<sup>1)</sup> Ved Salg efter Prøve gaar Sælgerens Pligt i Almindelighed ud paa, at Varen skal have Prøvens Egenskaber, men heller ikke mere. Sælgeren behøver altsaa ikke at levere almindelig god Handelsvare, naar Prøven ikke har denne Egenskab. Hyppig vil imidlertid Sælgeren udtrykkelig have garanteret visse bestemte Egenskaber foruden Prøvens, saaledes at Prøven kun bliver afgørende i visse Retninger, ikke i andre. Ligeledes vil det af Prøvens Beskaffenhed og Forhandlingerne kunne fremgaa, at Prøven kun i enkelt Retning skal være afgørende, f. Ex. som Farve bestemmende. Derhos kan Prøven i hvert Fald aldrig være bestemmende for de Egenskaber ved Varen, som overhovedet ikke eller dog ikke ved almindelig forretningsmæssig Undersøgelse kunne erkendes af Prøven. Undertiden vil det af erfaringsmæssig praktisk Vanskelighed ved at skaffe Varer, som nøje svare til Prøven, kunne fremgaa, at en fuldstændig Overensstemmelse med denne ikke kan forlanges, forsaavidt en saadan ikke netop er udtrykkelig betinget. Selvfølgelig maa der ved Sammenligning med Prøven tages Hensyn til de Forandringer, som Prøven af naturlige Aarsager kan være undergaaet ved at henligge. „Type-Prøve“ er ved et Responsum af 1886 bestemt som „en Prøve, der ikke repræsenterer noget bestemt Vareparti, men som afgiver en Rottesnor for den paagældende Vares Karakter i Almindelighed“. Afgivelsen mellem Varen og Typeprøven maa dog ikke repræsentere nogen reel Værdiforskel. Ved nogle Varearter ere visse Afvigelser fra Prøven kutymemæssig tilladte, til Dels mod Godtgørelse i Prisen (jvf. de trykte Sluttedler ndf. S. 88 ff.).

<sup>2)</sup> Har Sælgeren leveret for stort et Kvantum, maa Køberen antages at være pligtig at udskille en til den omkontraherede Mængde svarende Del af Leveringen, saafremt saadan Udskilning kan foretages uden Skade for hans Interesser, medens han i modsat Fald maa være berettiget til at afvise Leveringen.

<sup>3)</sup> „Udfaldsprøve“ eller „Partiprøve“, d. v. s. en Prøve, der sendes efter Varens Produktion, Sortering, Anskaffelse eller lign. idet Købet er sluttet, inden saadan Handling havde undet Sted.

45. The rules of § 25 concerning the estimate of the damages also apply when the sale is cancelled owing to a defect of the object sold.

46. If the seller is to deliver successively, and if one single delivery is defective, the purchaser according to §§ 42 and 43 may cancel the sale only in so far as this delivery is concerned. He may, however, also cancel the sale in so far as later deliveries are concerned, if it is to be expected that these also will be defective, or even cancel the sale in its entirety, if such cancellation can be justified by the way in which the various deliveries have been effected.

47. If before the conclusion of the bargain the purchaser has examined the subject matter of the sale, or without sufficient reason has omitted to examine it although called upon to do so by the seller, or if before the conclusion of the sale he has had an opportunity to examine a sample<sup>1)</sup> of the subject matter of the sale, he cannot plead ignorance with regard to defects which by such examination he ought to have discovered, unless the seller has acted fraudulently.

48. If the sale takes place by auction, the purchaser cannot plead that the object suffers from any defect, unless the object does not correspond with the description according to which it has been sold, or the seller has acted fraudulently. What is here prescribed does not, however, apply when a trader sells his goods by auction.

49. Where the seller offers to remedy a defect or to effect another delivery, the purchaser must content himself with this, if it can take place within the expiration of the time at which he is compelled to accept delivery (see § 21), and obviously cannot cause him cost or trouble.

The purchaser's right to claim damages is not affected by this rule.

50. The provisions of this Act with regard to the defects of the subject matter of the sale are correspondingly applicable where the delivered quantity is too small, in so far as the purchaser is bound to assume that the delivery which has been effected is intended to serve as a complete fulfilment of the contract. The purchaser cannot in this case demand a fresh delivery according to § 43, but he can, instead of this, claim delivery of the quantity which he has not received, whether this be a large or a small proportion of the quantity which ought to have been delivered<sup>2)</sup>.

51. In the case of commercial sales the purchaser, when the subject matter of the sale has been delivered, or a stipulated sample of the result<sup>3)</sup> has come into his hands, has to undertake such examination as ordinary commercial custom requires. If the object sold is sent from one place to another, the purchaser is not however obliged to examine the object until it has been placed at his disposal at the place of destination in such a manner that according to § 56 he would be under the obligation of taking charge of it.

<sup>1)</sup> When a sale has been concluded by means of a sample, the obligation of the seller generally implies that the merchandise shall possess the qualities of the sample, but no more. Consequently, the seller need not deliver generally good merchandise if the sample does not possess this quality. Frequently, however, the seller will have expressly guaranteed certain definite qualities besides those of the sample, and those of the sample will then only be decisive in certain respects, not in others. Furthermore, it may result from the quality of the sample, and the negotiations carried on between the parties, that the sample is to be decisive only in so far, for example, as the colour is concerned. But the sample can at any rate never be decisive with regard to those qualities of the merchandise which generally, or even through an ordinary business-like examination of the sample, cannot be discovered. In some cases experience has shown how difficult it is to provide goods which exactly correspond to the sample; it results from this circumstance that a complete harmony between goods and sample cannot be demanded unless such harmony has been expressly stipulated for. Of course when goods are compared with the sample, changes with the sample may undergo owing to the natural processes during storage must be considered. A "typical sample" has according to a responsum of 1886 been defined as "a sample which does not represent any definite lot of goods, but which indicates the general nature of the merchandise in question". The difference between the goods and the "typical sample" must, however, not represent any real difference in the price. In the case of some kinds of goods custom allows certain deviations from the sample, in consideration of an allowance being made in the price (see the printed brokers' notes below p. 88 et seq.).

<sup>2)</sup> If the seller has delivered too large a quantity, it is supposed to be incumbent on the purchaser to take from the delivered merchandise that part of it which corresponds to the quantity agreed on in the contract, in so far as such separation can be effected without prejudice to his interests, whereas in the contrary case he is entitled to reject the delivered merchandise.

<sup>3)</sup> A "sample of the result" or a "sample of the bulk", i. e. a sample which is sent after the merchandise has been produced, sorted, acquired etc., the sale having been concluded before such act had taken place.

52. Viser det sig, at den solgte Genstand lider af en Mangel, har Køberen, saafremt han vil paaberaabe sig Manglen, at give Sælgeren Meddelelse derom, i Handelskob straks og ellers uden ugrundet Ophold. Afgiver han ikke saadan Meddelelse, uagtet han har opdaget eller burde have opdaget Manglen, kan han ikke senere gøre den gældende.

Vil Køberen hæve Kobet, eller vil han kræve Efterlevering eller Omlevering, skal han uden ugrundet Ophold give Sælgeren Meddelelse derom, og har ellers tabt sin Ret til at afvise Genstanden eller kræve Efterlevering.

53. De i foregaaende Paragraf givne Bestemmelser om Tab af Køberens Ret til at paaberaabe sig Mangler komme ikke til Anvendelse, naar Sælgeren har handlet svigagtigt, eller naar han har gjort sig skyldig i grov Uagtsomhed, og denne medfører betydelig Skade for Køberen.

54. Har Køberen ikke inden et Aar efter Genstandens Overgivelse til ham meddelt Sælgeren, at han vil paaberaabe sig en Mangel, kan han ikke senere gøre den gældende, medmindre Sælgeren har paataget sig at indestaa for Genstanden i længere Tid eller har handlet svigagtigt.

#### Bestemmelser vedrørende Afvisning af leverede Genstande og Ophævelse af Køb.

55. Er Køberen kommen i Besiddelse af Genstanden, og vil han afvise den, er han pligtig at drage Omsorg for den, og kan af Sælgeren fordrø Erstatning for de ham derved paaførte Omkostninger<sup>1)</sup>. De i §§ 34 og 35 givne Regler finde tilsvarende Anvendelse.

56. Er i Tilfælde af Genstandens Forsendelse Køberen sat i Stand til paa Bestemmelsesstedet at komme i Besiddelse af Genstanden, og vil han afvise den, er han pligtig at tage den i sin Besiddelse for Sælgerens Regning<sup>2)</sup>.

Dette gælder dog ikke, hvis Sælgeren selv er tilstede paa Bestemmelsesstedet, eller hvis Ihændehaber af Konnossement eller anden Person, som paa Sælgerens Vegne kan tage sig af Genstanden, er tilstede der, eller hvis Køberen ikke kan faa Genstanden i sin Besiddelse uden at betale Kobesummen eller at paadrage sig anden væsentlig Omkostning eller Ulempe.

Naar Køberen har taget Genstanden i sin Besiddelse, komme Reglerne i foregaaende Paragraf til Anvendelse.

57. Hæves Kobet, er Sælgeren ikke berettiget til at faa Genstanden tilbage, medmindre han tilbagegiver, hvad han har modtaget i Betaling, og Køberen ikke berettiget til at faa Kobesummen tilbage, medmindre han tilbageleverer det modtagne i væsentlig samme Stand og Mængde, hvori det var ved Leveringen.

Køberen har, naar han hæver Kobet eller kræver Omlevering, Ret til at holde Genstanden tilbage, indtil Sælgeren svarer skyldig Erstatning eller stiller betryggende Sikkerhed for denne<sup>3)</sup>.

58. Selv om Genstanden er gaaet til Grunde eller forandret, kan Køberen, uanset Bestemmelserne i foregaaende Paragraf, hæve Kobet, saafremt Undergangen eller Forandringen skyldes en hændelig Begivenhed eller Genstandens egen Beskaffenhed eller Foranstaltninger, som udkrævedes til dens Undersøgelse, eller som ere trufne inden den Mangel, der medfører Ophævelse af Kobet, er opdaget eller burde være opdaget.

#### Om Vanhjemmel.

59. Oplyses det, at Salgs-genstanden ved Kobets Afslutning tilhorte en anden end Sælgeren, kan Køberen, selv om Sælgeren var i en undskyldelig Vildfarelse om sin Adkomst, kræve Skadeserstatning hos denne. Dette gælder dog ikke, hvis Køberen ved Kobets Afslutning ikke var i god Tro.

<sup>1)</sup> Denne foreløbige Omsorgspligt med Hensyn til, hvad Køberen alt har faaet i sin Besiddelse, naar han vil hæve den, selv om Sælgeren selv eller ved Fuldmægtig er tilstede paa Pladsen.

<sup>2)</sup> Derimod naar i Pladshandlen efter gældende Sædvane Køberen antages berettiget til at tilbagegive Genstanden.

<sup>3)</sup> Derimod har han næppe Tilbageholdelsesret i Genstanden til Sikkerhed for Opfyldelsen af hans Krav paa ny Levering.

52. If it is proved that the object sold is suffering from a defect, the purchaser, when he wants to take advantage of the defect, must inform the seller thereof, in the case of commercial sales at once, and in other cases without unreasonable delay. If he omits to give such notice, although he has discovered or ought to have discovered the defect, he is not entitled subsequently to take advantage of such defect.

If the purchaser wishes to cancel the sale, or if he wishes to demand a supplementary or a fresh delivery, he shall without unreasonable delay notify the seller thereof, in default of which he loses his right to reject the object or to claim a supplementary delivery.

53. The rules given in the preceding article as to loss of the purchaser's right to take advantage of defects, do not apply when the seller has acted fraudulently, or when he has been guilty of grave negligence which causes considerable loss to the purchaser.

54. If the purchaser does not within a year after the day on which the object sold was delivered to him inform the seller that he intends to take advantage of a defect, he cannot do so later, unless the seller has undertaken to guarantee the object for a longer period, or has acted fraudulently.

#### Rules concerning the rejection of delivered objects and the cancellation of sales.

55. If the purchaser has taken possession of the object, and he wants to reject it, it is incumbent on him to take care of the object, and he can claim to be indemnified by the seller against such expenses as he may thereby incur<sup>1</sup>). The rules given in §§ 34 and 35 apply in a corresponding manner.

56. If in the case of the seller despatching the object sold, the purchaser has been placed in a position to take possession thereof at the place of destination, and if he wants to reject such object, he shall take charge thereof at the expense of the seller<sup>2</sup>).

This rule, however, does not apply if the seller himself is present at the place of destination, or if the holder of the bill of lading, or another person who on behalf of the seller can take charge of the object, is present there, or if the purchaser cannot take possession of the object without paying the price or incurring other considerable cost or trouble.

When the purchaser has taken possession of the object sold, the rules of the preceding Article apply.

57. If the sale is cancelled, the seller is not entitled to have the object sold returned to him, unless he refunds the amount which he has received in payment, and the purchaser is not entitled to recover the price paid, unless he returns the received goods essentially in the same state and quantity in which they were at the time of delivery.

The purchaser, when he cancels the sale or demands fresh delivery, has a right to retain the object until the seller has paid him a sufficient compensation or given a satisfactory security for such compensation<sup>3</sup>).

58. Even when the object sold has been lost or altered, the purchaser can, in spite of the rules of the preceding Article, cancel the sale, if the loss or the alteration is due to an accidental occurrence, or to the nature of the object itself, or to the arrangements necessary for its examination, or measures carried out before the defect which causes the cancellation of the sale has been discovered or ought to have been discovered.

#### Warranty against eviction.

59. If it becomes known that at the conclusion of the sale the object sold belonged to another person than the seller, the purchaser can, even if the seller was in an excusable error as to his right of ownership, claim compensation from him. This however does not apply if the purchaser at the conclusion of the sale did not act in good faith.

<sup>1</sup>) The preliminary obligation of taking charge of what the purchaser already has in his possession is incumbent on him even when the seller himself or his agent is present on the spot.

<sup>2</sup>) On the other hand, in commerce the purchaser according to prevalent custom is supposed to have a right to return the object on the spot.

<sup>3</sup>) On the other hand, he has hardly a right to retain the object as security for the fulfilment of his claim to a fresh delivery.

### Om Køb paa Prøve.<sup>1)</sup>

60. Er en Genstand købt paa Prøve eller paa Besigtigelse, og er den leveret, bliver Køberen bunden ved Købet, saafremt han ikke inden aftalt Tid eller, om ingen Tid er aftalt, inden passende Frist har meddelt Sælgeren, at han ikke vil beholde Genstanden.

Saalænge Køberen har Genstanden til Prøve eller Besigtigelse, bærer han Faren for den.

### Om Meddelelser efter denne Lov.

61. Er saadan Meddelelse fra Køberen, som omhandles i §§ 6, 26, 27, 52 og 54, indleveret til Befordring med Telegraf eller Post, eller, hvor andet forsvarligt Befordringsmiddel benyttes, afgivet til Befordring dermed, medfører det ikke Tab af Ret for Afsenderen, at Meddelelsen forsinkes eller ikke kommer frem<sup>2)</sup>.

Det samme gælder om de Meddelelser fra Sælgeren, som omhandles i §§ 31 og 32.

### Om Betydningen af visse Salgsklausuler.

62. Er en Vare solgt „frit ombord“ (fob) paa et angivet Sted, har Køberen at befragte Skib eller betinge Skibsrums til Varens Befordring fra dette Sted<sup>3)</sup>.

Sælgeren har at besørge og bekoste Varens Forsendelse til Afskibningsstedet og at træffe de Foranstaltninger med Hensyn til dens Indladning, som ifølge der gældende Lov eller Sædvane paahviler en Aflader<sup>4)</sup>.

Naar Varen er kommen indenfor Skibssiden, ophører Sælgeren at bære Faren for den.

Om Varen lider af Mangler, bedømmes efter dens Tilstand paa samme Tidspunkt, ligesom ogsaa dens Mængde paa dette Tidspunkt bliver at lægge til Grund, saafremt Kobesummen skal beregnes efter Maal, Vægt eller Tal.

Den Omstændighed, at Køberen har befragtet Skib eller betinget Skibsrums, medfører ikke Pligt for Køberen til at undersøge Varen for dens Fremkomst til Bestemmelsesstedet og afskærer ikke heller Sælgeren fra at udøve de i §§ 15, 28 og 39 omhandlede Rettigheder.

Køberen er, selv om der ikke er truffet særlig Aftale derom, pligtig at betale mod Konnossement overensstemmende med, hvad der er bestemt i § 71.

<sup>1)</sup> Om der foreligger et Køb paa Prøve eller ej, maa afgøres efter, hvad der maa antages at have været Parternes virkelige Mening, og ikke udelukkende efter de brugte Udtryk, der tit ville være unøjagtige. Undertiden vil saaledes Udtrykket „paa Prøve“ blive brugt, hvor der i Virkeligheden menes „til Prøve“ „som Prøve“, og altsaa foreligger en ubetinget Kontrakt om et første Parti, efter hvis Udfald Bestemmelse om Afslutning af yderligere Handel vil blive taget.

<sup>2)</sup> Dog kan selvfølgelig den paagældende Part være pligtig at gentage Meddelelsens Afsendelse i Tilfælde, i hvilke han f. Ex. gennem senere modtagen Skrivelse fra den anden Part, der ikke omtaler Reklamationen, eller gennem sit Kendskab til Postforbindelsens Afbrydelse o. lign. bør være klar over, at Meddelelsen ikke er naaet frem til Adressaten. En Reklamation maa saa tydeligt og præcist, som Omstændighederne tillade det, angive, hvad det er, der reklameres imod, og ikke holdes i ubestemt Almindelighed.

<sup>3)</sup> Hvis der imidlertid til Klausulen „frit ombord“ er tilføjet „pr. den eller den Damp“, „pr. den eller den Linie“, „pr. første Damp“ eller lign., eller der i en vis Forretningsgren findes særlige Sædvaner, hvorefter saadant underforstaas, kan det være Sælgerens Pligt at sikre Skibsrums i Henhold dertil.

<sup>4)</sup> Blandt de Udgifter, som eventuelt Sælgeren maa afholde, er ogsaa Vejning. Garnering (Matter) leveres i Reglen af Afladeren, men betales af Køberen (jvf. herved Solovens § 116). Har Sælgeren intet Forbehold taget med Hensyn til Dybtgaaende osv., og Køberen sender et Skib, som i Størrelse svarer til det købte Parti, og som kan komme ind til sædvanlig Lasteplass i Havnen, maa eventuelle Omkostninger ved Lægtning paahvile Sælgeren. Hvis Køberen ikke opfylder sin Forpligtelse til at have ladet Skib tilstede i rette Tid, berettiger dette ikke Sælgeren til at fragte Skib paa hans Vegne og tilstille ham det købte paa hans Hjemsted. Derimod kan han oplægge Værerne til Afhentning eller efter forudgaaet Mindelse sælge dem, begge Dele paa Køberens Regning og Risiko.

Test purchases.<sup>1)</sup>

60. If an object has been bought with a view to testing or examining it, and if it has been delivered, the purchaser will be bound by the purchase, in so far as he has not, within the stipulated time, or, if no time has been stipulated, within a reasonable time, informed the seller that he will not keep the object.

As long as the purchaser keeps the object for test or examination, he is responsible for the same.

## Declarations to be made according to this Act.

61. If such a declaration on the part of the purchaser as is mentioned in §§ 6, 26, 27, 52 and 54, has been delivered for conveyance by telegraph or post, or, where other reliable means of communication are used, delivered for transmission by the same, it does not entail a loss of right for the sender if the declaration is delayed or does not arrive at the place of destination<sup>2)</sup>.

The same rule obtains with regard to those declarations by the seller which are dealt with in §§ 31 and 32.

## The meaning of certain stipulations in connection with sales.

62. If an article has been sold "free on board" (f. o. b.) at a place indicated, it is incumbent on the purchaser to freight a ship or to hire the room on board a ship necessary for the transport of the merchandise from that place<sup>3)</sup>.

The seller has to take charge of and defray the expenses of sending the merchandise to the place of shipping, and to make those arrangements with regard to the loading of the merchandise as according to the laws and customs obtaining there are incumbent on the consignor<sup>4)</sup>.

When the merchandise has come on board, the seller ceases to be responsible for the same.

The question whether the merchandise is suffering from defects is determined according to the condition in which it is at that very moment, and also its quantity at this moment is the basis, when the price is to be calculated according to measure, weight or number.

The circumstance that the purchaser has freighted a ship, or hired the necessary room on board a ship, does not imply any obligation on the part of the purchaser to examine the merchandise before its arrival at the place of destination, nor does it debar the seller from exercising the rights dealt with in §§ 15, 28 and 39.

The purchaser, even if nothing has been expressly agreed on to this effect, has to pay against the bill of lading according to the provisions of § 71.

1) Whether a sale is a test sale or not must be decided according to what is supposed to have been the real intention of the parties, and not exclusively according to the terms used, which are frequently inexact. Sometimes also the term "on test" is used where in reality it is intended to be "for test" "as test", and consequently there is before us an unconditional contract bearing on a first delivery, according to the result of which a decision will be taken as to the conclusion of further transactions.

2) The interested party, however, may of course be under the obligation of sending his information over again in cases where he, for example, owing to a letter subsequently received from the other party, a letter not mentioning any protest, or owing to his knowing about the interruption of the postal connection etc., ought to understand that his information has not reached its destination. A protest, as clearly and precisely as circumstances allow it, must indicate what is protested against, and not be couched in indefinite generalities.

3) If, however, to the clause "free on board" has been added "by this or that steamer", "by this or that line", "by the first steamer" etc., or if in a certain line of business special customs obtain according to which such terms are implied, it is incumbent on the seller to secure room on board a ship accordingly.

4) Amongst the expenses which the seller eventually has to defray, is also that of weighing. Dunnage (mats) is as a rule procured by the freighter, but is paid by the purchaser (see in this respect the Maritime Law § 116). If the seller has made no reservation with regard to the draught of water etc., and the purchaser sends a vessel the size of which corresponds to the quantity of goods sold, and which can reach the usual loading place in the port, it is incumbent on the seller to defray the expenses for lighterage. If the purchaser does not fulfil his obligation to provide a ship ready for loading at the stipulated time, this does not entitle the seller to freight a vessel on his behalf, and to place the sold merchandise at his disposal at his place of domicile. On the other hand, he is entitled to store the merchandise until it is taken away, or, after previous notice given, to sell it, both for the account and at the risk of the purchaser.

63. Er en Vare solgt „fragtfrit“ (cost and freight, c & f, e f), har Sælgeren at besørge og bekoste dens Forsendelse til Bestemmelsesstedet.

Faren gaar over paa Koberen, saasnart Varen overensstemmende med de i § 10 givne Regler er overgivet til en Fragtfører eller bragt indenfor Skibssiden.

Om Varen lider af Mangler, bedømmes efter dens Tilstand paa det Tidspunkt, da Faren for den gaar over paa Koberen, ligesom ogsaa dens Mængde paa dette Tidspunkt bliver at lægge til Grund, saafremt Kobesummen skal beregnes efter Maal, Vægt eller Tal.

Koberen er, selv om der ikke er truffet særlig Aftale derom, pligtig at betale mod Konnossement eller Fragtbrev overensstemmende med, hvad der er bestemt i § 71.

Koberen har, selv om Kobesummen ikke er forfalden til Betaling ved Varens Fremkomst, at betale den Fragt, som ikke er erlagt af Sælgeren, mod Fradrag i Kobesummen, men uden Godtgørelse for Rente.

64. Er en Vare solgt „cif“ (cost, insurance, freight) eller „caf“ (coût, assurance, fret), gælder, hvad der i foregaaende Paragraf er bestemt.

Sælgeren har derhos for den Del af Forsendelsen, under hvilken han ikke bærer Faren, for Koberen at tegne sædvanmæssig Forsikring. Undlader Sælgeren at tegne saadan Forsikring, uden at Købet af den Grund hæves, kan Koberen kræve Erstatning for Skade, som maatte følge af Undladelsen, eller selv tegne Forsikring og afdrage Omkostningerne i Kobesummen<sup>1)</sup>.

65. Er en Vare solgt „leveret“ eller „frit“ (franco) paa et angivet Sted, anses Levering ikke for sket, førend Varen er kommet frem til dette Sted. Sælgeren har saaledes at besørge og bekoste dens Forsendelse dertil og bærer under Forsendelsen Faren.

Om Varen lider af Mangler, bedømmes efter dens Tilstand ved Fremkomsten, ligesom ogsaa dens Mængde paa dette Tidspunkt bliver at lægge til Grund, saafremt Kobesummen skal beregnes efter Maal, Vægt eller Tal.

I Sammensætning med „fragtfrit“, „c & f“, „e f“, „cif“ eller „caf“ har Benyttelsen af Ordet „leveret“ ingen Betydning for Forstaaelsen af den nævnte Klausul<sup>2)</sup>.

1) Vil Koberen hæve Købet som Følge af Sælgerens Undladelse af at tegne Forsikring, har han Ret dertil, saafremt han ikke uden Forbehold har modtaget Konnossement paa Varen, nagtet han vidste, at Forsikring ikke var tegnet, eller Varen er oplosset paa Bestemmelsesstedet, uden at have lidt saadan Skade, som Forsikringen skulde dække. Hvad Forsikringens nærmere Karakter angaar, maa det anses sædvanmæssig fastslaaet, at Forsikringen i hvert Fald skal tegnes til fuld Dækning af Fakturabeløbet, at den skal tegnes hos et som solidt anset Selskab, samt at den kun behøver at dække Beskadigelse i Tilfælde af Stranding, Ild, Is eller Kollision, men dertil kommer efter Omstændighederne en Pligt til at tegne Forsikring ogsaa for visse Procent af Fakturabeløbet som „forventet Handelsfordel“ („imaginær Avance“), uden at der dog i saa Henseende endnu har uddannet sig ensartede almindelige Regler. Efter de kjøbenhavnske Sluttedler for Korn og Foderstoffer skal der saaledes gives Police for Fakturabeløbet med Tillæg af 5 pCt., medens Policen ifølge Kutyme i Kulhandlen skal dække 10 pCt. imaginær Avance. — Ifølge foreliggende Responsa ansees Sælgeren ved en cif Handel pligtig foruden Fragt og Assurance til Bestemmelsesstedet tillige at afholde saadanne Udgifter som f. Ex. Udforsølstold, Kanalafgift o. lign., hvorimod alle Omkostninger ved Varernes Modtagelse paa Bestemmelsesstedet, deriblandt Lægterpenge, maa antages at skulle betales af Koberen.

2) Klausulen „leveret“ faar kun selvstændig Betydning, naar den knyttes til et Bestemmelsessted, der ikke alt uden særlig Vedtagelse vilde være Leveringsstedet. Ved et virkeligt Salg „leveret“ maa Koberen sørge for Varernes Modtagelse paa Leveringsstedet, og fra det Øjeblik, da Varen behørigt leveres ham her, gaar al videre Udgift og Risiko over paa ham. Kommer Varen ad Søvejen, er det ordentligvis Sælgerens Pligt at levere Varen paa Skibets Ræling, og altsaa Koberens Pligt at modtage den „frit fra Skib“. I forskellige Forretningstyper foreligge dog herfra afvigende Sædvaner. At der til Ordet „leveret“ føjes „pr. Dumpskib“, „pr. Sejlskib“, „pr. Bano“, „pr. Vogn“ har Betydning dels med Hensyn til den Leveringsfrist, der er indrømmet Sælgeren, dels med Hensyn til de Foranstaltninger fra Koberens Side, som Modtagelsen nødvendiggør, og den Hurtighed, hvormed han skal have Modtagelsen tilendebragt. Har Sælgeren leveret med et andet Transportmiddel end vedtaget, maa han derfor selv dække den forvoldte Forøgelse af Modtagelsesomkostningerne eller endog finde sig i, at Koberen hæver Kontrakten. Naar Varer, der komme fra Udlandet, sælges „at levere her“, „at levere frit paa en Jærnbane-station her i Landet“ eller lign. er der — i alt Fald,



**63.** If merchandise is sold "freight-free" (cost and freight, c. and f., c. f.), the seller is bound to take charge of and to pay for the sending of the same to the place of destination.

The risk passes to the purchaser as soon as the merchandise, according to the rules given in § 10, has been delivered to a carrier or consigned on board a ship.

The question whether the merchandise suffers from defects is determined according to the state in which it is at the moment when the risk passes to the purchaser; also the quantity which the merchandise has at that moment will be the basis if the price is to be calculated according to measure, weight or number.

The purchaser, even if nothing has been agreed on to this effect, has to pay against the bill of lading or charter party according to the provisions of § 71.

The purchaser, even if the price is not due for payment on the arrival of the merchandise, must pay that freight which has not been paid by the seller, and may deduct the same from the price, but without any allowance being made for interest.

**64.** If merchandise has been sold "c. i. f." (cost, insurance, freight) or "c. a. f." (cost, assurance, fret), the rules of the preceding Article apply.

The seller on behalf of the purchaser also has to take charge of the customary insurance for that part of the transit during which he does not support the risk. If the seller omits to take charge of the insurance without the sale being cancelled for such reason, the purchaser can claim compensation for the damage resulting from the omission, or he himself is entitled to insure and deduct the cost from the price<sup>1</sup>).

**65.** If merchandise has been sold "delivered" or "free" (*franco*) at a place which is agreed on, delivery is not considered as having been effected until the merchandise has arrived at that place. The seller consequently has to take charge of and pay the cost of sending it there, and he bears the risk during the transit.

Whether the merchandise suffers from defects is determined according to the state in which it is on arrival at the place of destination, and also its quantity at that moment will be the basis if the price has to be calculated according to measure, weight or number.

The word "delivered" does not convey any meaning as to the interpretation of the terms "freight-free", "c. & f.", "c. f.", "c. i. f." or "c. a. f." when used in connection with them<sup>2</sup>).

<sup>1</sup>) If the purchaser wishes to cancel the sale because the seller has omitted to insure, he has a right to do so, unless he has received the bill of lading of the merchandise without making a reservation and with the knowledge that insurance had not been effected, or the merchandise has been unloaded at the place of destination without having suffered such damage as the insurance should cover. As to the special character of the insurance it is considered as settled by custom that at any rate the full invoice amount has to be covered by insurance, that the policy shall be taken out with a company which is considered solvent, and that the policy need only cover damage caused by stranding, fire, ice or collision. According to the circumstances, there is sometimes an obligation to cover by insurance a certain percentage of the invoice amount under the designation of "expected trading gain" ("imaginary profit"), but in this respect no uniform general rules have as yet been established. According to the broker's notes issued at Copenhagen for corn and feeding stuffs a policy must be given for the invoice amount with an additional 5 per cent., whereas the policy in the coal trade, owing to custom, must cover 10 per cent. imaginary profit. — According to available *Responsa*, the seller in the case of a c. i. f. transaction, besides freight and insurance to the place of destination, is held liable to defray such expenses, for example, as export duty, canal dues etc., whereas all the expenses to be defrayed when the merchandise is received at the place of destination, amongst others lighterage, are to be paid by the purchaser.

<sup>2</sup>) The term "delivered" acquires independent importance only in connection with a place of destination which would not already without special agreement be the place of delivery. In the case of a genuine sale specified as "delivered", the purchaser must see that he receives the goods sold at the place of delivery, and from the moment at which the goods are duly delivered to him there, all further expense and risk are at his charge. If merchandise arrives by sea, the seller generally has to deliver it at the ship side, and consequently the purchaser has to receive such merchandise "free from the ship". In various lines of business, however, customs different from this rule obtain. The addition to the word "delivered" of a term like "by steamer", "by sailing vessel", "by railway", "by waggon" is of importance partly with regard to the period for delivery granted to the seller, partly with regard to the necessary arrangements to be made by the purchaser when he receives the goods, and the rapidity with which he is to terminate taking possession of them. If the seller has sent the goods sold by some other means of transport than the one stipulated, he himself has in consequence to defray the corresponding increase in the expense connected with the reception of the goods, and the seller even has to put up with

66. Er en Vare købt med saadan Angivelse af dens Mængde, at der for samme er aabnet et vist Spillerum, saasom „cirka“, „fra—til“ eller lignende, tilkommer det Sælgeren at træffe Valget, medmindre det fremgaar af Omstændighederne, at Spillerummet er indrømmet i Køberens Interesse<sup>1)</sup>.

Er Betegnelsen „cirka“ benyttet, er Spillerummet 10 pCt. op eller ned for Ladning og ellers 5 pCt.<sup>2)</sup>

67. Er der solgt „en Ladning“, maa Sælgeren ikke sende andre Varer med samme Skib. Sker det, og kan det for Køberen medføre Ulempe, kan denne hæve Købet; enten Købet hæves eller ikke, har han Ret til Skadeserstatning.

68. Er det aftalt, at Varen skal leveres eller aftages „i Begyndelsen“ („primo“) „i Midten“ („medio“) eller „i Slutningen“ („ultimo“) af en Maaned, forstaas herved henholdsvis den første til tiende, den ellefte til tyvende og den enogtyvende til sidste Dag i Maaneden.

Ved Køb af Værdipapirer betyder „primo“ den første Sognedag i Maaneden, „medio“ den femtende Dag i Maaneden, eller, om denne Dag falder paa en Helligdag, den følgende Sognedag, og „ultimo“ den sidste Sognedag i Maaneden<sup>3)</sup>.

hvor Salget er foregaaet ved en herværende Person, eller Prislister have været fremlagte her — Tilbøjelighed til at forstaa det saaledes, at Sælgeren er forpligtet til at levere Varerne fortoldede her. — Ved Salg „frit til Skib“ har Sælgeren at henbringe Varerne til Skibet, medens Køberen betaler Omkostningerne ved selve Ombordbringningen i Skibet, deriblandt de Havne- eller Bolværkspenge, som maatte paahvile Varerne. Bestemmelser af lignende Art er „frit til Pakhus“, „frit tilkørt“ o. lign., alle Klausuler, der nærmest høre hjemme i Pladshandlen. Ved Salg „frit fra Skib“ bærer Køberen alle Udgifter ved Modtagelsen fra Skibets Ræling, og paa samme Maade ved Salg „frit fra Pakhus“ o. s. v. alle Udgifter (Paalæsning, Transport osv.) ved Afhentningen fra det bestemte Sted. Sælgeren er uberettiget til at sætte et Udleveringssted af anden Art i Stedet for det vedtagne. — „Frit paa Bane“ med Tilføjeelse af et Afsendelsessted maa ved Landtransporten udtrykke noget lignende som „frit ombord“ ved Setransporten, dog bliver der selvfølgelig ved den nærmere Bestemmelse af Sælgerens Pligt at tage Hensyn til Indholdet af de paagældende Trafikreglementer. Ved „frit paa Vogn“ forstaas i Reglen frit paa Arbejdsvogn, ikke paa Jærnbanevogn. — Under Manglen af bestemte Lovregler eller Sædvaner af almindeligere Karakter kunne de her ommeldte Klausuler i øvrigt i flere Retninger frembyde Tvivl, saaledes med Hensyn til det nøjagtige Tidspunkt for Risikoens Overgang paa Køberen og med Hensyn til, hvilken af Parterne der skal bære Omkostningerne ved Stuvningen. Frit fra (ab) en vis Plads vil i Reglen betegne det samme som „frit ombord“ eller „frit paa Bane“.

<sup>1)</sup> Dette vil f. Ex. gerne være Tilfældet ved køb Salg, hvor Køberen skal skaffe Skib.

<sup>2)</sup> I Tilfælde af Misligholdelse antages det i Almindelighed at Erstatningen ved „circa“-Betegnelsen bliver at bestemme efter selve Tallet uden Hensyn til „circa“ og ved Betegnelsen „fra-til“ efter Middeltallet mellem de to tilføjede Grænsetal. Hvor det er Hensynet til den usikre Skibslejlighed, der har været bestemmende for Spillerummets Indrømmelse, er denne Opfattelse ogsaa naturlig. Hvor Spillerummet er indrømmet af Hensyn til, at Sælgeren ikke paa Forhaand har kunnet overse, hvor meget han vil blive i Stand til at producere, eller Køberen, hvad han vil faa Brug for, synes det derimod rimeligere at følge den Anskuelse, der ogsaa er fremsat, nemlig at den Part, som har Ret til at bestemme Mængden, men ikke har haft Lejlighed til at gøre dette inden Misligholdelsen, kan forlange, at den for ham som erstatningsberettiget eller erstatningspligtig fordelagtigste Mængde lægges til Grund ved Erstatningens Beregning.

<sup>3)</sup> Skal der leveres et vist Kvantum pr. Maaned paa Køberens Anfordring, maa saadant Kvantum være disponibelt den 1ste i hver af de paagældende Maaneder til Levering paa Anfordring inden Maanedens Slutning. Ligeledes antages en Bestemmelse som den „at modtage successive i Løbet af (saa og saa mange) Maaneder“ at være truffet nærmest i Køberens Favor, dog at han ikke kan forlange det hele Parti eller en uforholdsmæssig Del deraf paa en Gang. Er der ingen Bestemmelse truffet om, hvornaar Køberen senest skal modtage Varerne, f. Ex. hvor et Parti er solgt „at levere efterhaanden, som Køberen faar Brug derfor“ eller lign., antages dette dog ikke at berettige Køberen til at forlange Modtagelsen i det uendelige; men han maa være forpligtet til at modtage Partiet indenfor en rimelig Frist, og han har navnlig ikke Ret til at udskyde Modtagelsestiden ved i Mellemtiden at forbruge andetstedsfra anskaffede Varer af samme Art.

66. If merchandise has been sold with such an indication of quantity as to denote a certain latitude, as for example "circa", "from — to" etc., the option appertains to the seller, unless it appears from the circumstances that the latitude was accorded in favour of the purchaser<sup>1</sup>).

If the term "circa" is used, the margin is calculated at 10 per cent. upwards or downwards for cargo, and otherwise at 5 per cent.<sup>2</sup>)

67. If "a cargo" has been sold, the seller must not send other goods by the same vessel. If he does so, and the purchaser may be prejudiced by such act, the latter can cancel the transaction; whether the sale is cancelled or not, he is entitled to damages.

68. If it has been stipulated that the merchandise shall be delivered or received "at the beginning" ("primo"), "at the middle" ("medio") or "at the end" ("ultimo") of a month, these terms mean respectively the first to the tenth, the eleventh to the twentieth, and the twenty first to the last, day of the month.

In the case of a sale of negotiable securities, "primo" means the first business day of a month, "medio" the fifteenth day of a month, or, if this day is a holiday, the first business day following, and "ultimo" the last business day of a month<sup>3</sup>).

it if the purchaser cancels the contract. When goods coming from abroad are sold "to be delivered here", "to be delivered free at a railway station in this country" etc., one is, — at any rate when the sale has been concluded by a person resident here, or price lists have been distributed here — inclined to assume that the seller has to deliver the goods duty paid here. — In the case of a sale "free to the ship", the seller has to transport the goods to the ship, whereas the purchaser defrays the costs of carrying them on board, amongst them the harbour or wharf dues to which the goods may be subject. Similar stipulations are "free to storehouse", "free delivered" etc., all terms which more particularly bear on local trade. In the case of a sale designated as "free from ship", the purchaser defrays all the expenses connected with taking the goods from on board the ship, and similarly, when the sale is designated as "free from storehouse" and so on, all the expenses (loading, transport etc.) connected with taking them from the place designated. The seller is not entitled to substitute a different place of delivery for the one which has been stipulated. — "Free to railway" with the addition of a place of sending, when the carriage takes place by land, must express something similar to "free on board" when the transport is effected by sea; it is however of course necessary to refer to the details of the respective traffic regulations when the obligations of the seller are to be ascertained in detail. "Free to the waggon" is as a rule understood to mean free to a van, not to a railway waggon. — In default of definite legal rules or customs of a general nature, the interpretation of the foregoing terms, it must be admitted, is in several respects open to doubt, notably that regarding the exact moment at which the risk passes to the purchaser, and that regarding which of the parties has to defray the stowage expenses. Free from (ab) a certain place as a rule means the same as "free on board" or "free to the railway".

1) This for example as a rule obtains in the case of f. o. b. sales where the purchaser has to provide the ship.

2) In the case of a breach of contract, it is generally admitted that when the term "circa" has been used, the damages are to be fixed according to the figure itself without having regard to "circa", and when the term "from-to" has been used, according to the mean between the two extreme figures indicated. This interpretation is also justified in cases where the latitude has been granted owing to the difficulty of freighting a vessel. On the other hand, where the latitude has been granted owing to the fact that the seller was unable beforehand to estimate what quantity he would be able to produce, or the purchaser what quantity he would require, it seems more reasonable to adhere to the opinion which also has been advanced, viz., that the party who is entitled to fix the quantity, but has not had the opportunity of doing so before the breach of contract occurred, is entitled to claim that the quantity which is most favourable to him as the person who has the right to demand damages or the obligation to pay damages, shall be considered as the basis for the calculation of the damages.

3) In cases where a certain quantity is to be delivered per month at the request of the purchaser, such quantity must be available on the first day of each of the following months, in order to be ready for delivery on request during the month. Similarly it is supposed that a clause like "to be received successively in the course of (so and so many) months", preferably ought to be interpreted in favour of the purchaser; he is not entitled however to claim at once the entire quantity or a disproportionate part of it. If no stipulation has been made as to when the purchaser at the latest is to receive the goods, for example, when a certain quantity has been sold "to be delivered successively as the purchaser needs it", or other similar clause, this is not however supposed to entitle the purchaser to postpone indefinitely the taking possession of the merchandise; but it is incumbent on him to receive the quantity within a reasonable time, and notably he has no right to postpone receiving merchandise owing to the circumstance that in the meantime he has availed himself of the same kind of goods obtained from elsewhere.

69. Har Sælgeren af en Vare forpligtet sig til at foretage „Afskibning“ eller „Afladning“ inden en vis Frist, skal Afskibningen eller Afladningen anses for at være tilendebragt i rette Tid, naar Varen er indladet inden Fristens Udlob<sup>1)</sup>.

Er Konnossement udfærdiget, og fremgaar det ikke af dettes Udvisende, at Indladningen er sket i rette Tid, kan Køberen afvise Varen.

70. Naar „kontant Betaling“ er aftalt, er Køberen pligtig at betale samtidig med, at Salgsgegenstanden stilles til hans Raadighed (jfr. §§ 14 og 15)<sup>2)</sup>.

71. Har Køberen forpligtet sig til at betale mod Konnossement („kontant mod Konnossement“ eller lignende) eller til at akceptere Vexel mod Konnossement, kan han ikke nægte Betaling eller Akcept, fordi den solgte Vare ikke endnu er kommen frem, eller han ikke har haft Adgang til at undersøge den.

Naar Betaling eller Akcept kræves mod Konnossement, maa Regning paa Varen være kommen Køberen i Hænde, hvorhos Konnossementet, saafremt Sælgeren har paataget sig Varens Forsikring, maa være ledsaget af Forsikringspolice<sup>3)</sup>.

<sup>1)</sup> „Strax Afskibning“ forudsætter, at Skib haves parat paa Ladestedet. Forpligtelsen til „prompt Afladning“ antages i Reglen opfyldt ved en Afladning i Løbet af 3 Uger med Sejskib og 14 Dage eller 3 Uger med Damp. Det Tidspunkt, der i en saakaldt Isklausul (Vinterklausul) betegnes som „ved første aabne Vande“, „ved Skibsfartens Aabning“ o. lign. antages ikke indtraadt, fordi enkelte Dampere med Anstrængelse kunne arbejde sig gennem Isen, men først naar Sejladsen atter med Rimelighed maa siges at kunne ske uden Risiko, og Skibsfarten paa den eller de paagældende Havne som Følge deraf i Almindelighed er genaabnet.

<sup>2)</sup> En vigtig Følge af, at der ved Salg er betinget kontant Betaling, er den, at Sælgeren, hvis Køberen gaar fallit, inden Betaling er erlagt, og de solgte Varer kunne paavises i Konkursboet, er berettiget til, hvis Boet ikke vil betale fuldt ud, at forlange dem tilbage, eventuelt mod at godtgøre udlagt Fragt og lign. En saadan Tilbagefordringsret er endog af Domstolene blevet indrømmet Sælgeren, selv om der i Forbindelse med Betingelsen „pr. kontant“ er indrømmet en ringe Henstand, f. Ex. af 8 eller 14 Dage. Ved Salg mod Akcept kan Sælgeren, naar han trækker, datere Vexlen paa Varenes Afsendelsesdag (Fakturaens Dato), og Akcept kan forlanges ved Varenes eller Konnossementets Modtagelse.

<sup>3)</sup> Hvor Bankrembours benyttes, er det noget tvivlsomt, hvorvidt Køberen er ansvarlig for Bankens Soliditet, eller om hans Forpligtelse overfor Sælgeren er fyldestgjort, naar han bevislig selv har dækket Remboursen i Banken; men Spørgsmaalet antages at maatte besvares i sidstnævnte Retning. Paa den anden Side maa Sælgeren, hvis der er betinget „prima Bankrembours“, kunne refusere Rembours paa et Hus, der ikke kutymemæssig henregnes til første Klasse, og, hvis der kun er betinget Bankrembours i Almindelighed, kunne refusere Rembours paa et Hus, om hvis Soliditet der kan rejses begrundet Tvivl. Hvis Konnossementets Frenkomst forsinkes ved, at det skal passere gennem en Bank paa en anden Plads end Køberens, er dette efter dansk Sædvane Køberens Risiko, naar Sælgeren blot har opfyldt sin Forpligtelse til hurtigst muligt at afsende Papirerne.

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Tillægsnote om Differencehandler (Terminsforretninger). Paa Børsen i Kjøbenhavn har der aldrig været foretaget regelmæssige Terminsforretninger, hverken i Varer eller i Effekter, og Regler af lignende Art som de, der indeholdes i den tyske Børslov af 22 Juni 1896, findes ikke i dansk Ret. Paa den anden Side har det under Terminshandlens voksende Betydning i Udlandet ikke kunnet undgaaes, at Handlen i Danmark er blevet paavirket deraf, og de udenlandske Terminsbørser ere herfra benyttede saavel til Dækningsforretninger som til Spekulation. Selv om Terminsforretningen viser sig at være en ren Spekulationsforretning, en ren Differencehandel — d. v. s. en under Leveringskøbets Skikkelse fremtrædende Kontrakt om, at Parternes Møllestående skal bestaa deri, at Differencen mellem den aftalte Pris og Leveringsdagens Pris skal betales af den saakaldte Sælger, dersom Varen stiger i Pris, men af den saakaldte Køber, dersom Varen falder i Pris, medens der ikke skal finde nogen virkelig Vareomsætning Sted — anerkendes den som retsgyldig efter dansk Ret. Differencehandlen er jo nemlig vel ikke noget Køb og Salg, men dog en nærmest med Væddemaal beslægtet Hasardkontrakt og den danske Rets Stilling i heromhandlede Retning er i det Hele, kert udtrykt, denne, at den betragter Spil (Spillekontrakter) som ugyldige, men Væddemaal som gyldige. Om Retsgyldigheden af Præmieforretninger d. v. s. Leveringskøb med en mod en Godtgørelse (Præmie) aftalt Ret for den ene af Kontrahenterne til ensidig at træde tilbage fra Kontrakten eller forandre dens Indhold, hersker der ej heller Tvivl i dansk Ret.

69. If the seller of merchandise has agreed to effect "shipment" or "unloading" within a certain period, the shipment or the unloading is considered as having been effected in due time, when the merchandise has been shipped before the expiration of the period<sup>1)</sup>.

If a bill of lading has been made out, and if this does not show that the shipment has been effected in due time, the purchaser is entitled to reject the merchandise.

70. When "payment in cash" has been stipulated for, the purchaser must pay at the same time as that at which the object sold is placed at his disposal (see §§ 14 and 15)<sup>2)</sup>.

71. If the purchaser has agreed to pay against bill of lading ("cash against bill of lading" etc.) or to accept a bill of exchange against a bill of lading, he cannot refuse to pay or to accept a bill of exchange because the object sold has not yet arrived, or because he has not had the opportunity of examining the same.

When payment or acceptance of a bill of exchange is demanded against a bill of lading, an invoice of the merchandise must have been handed over to the purchaser, and furthermore the bill of lading, if the seller has undertaken the insurance of the merchandise, must be accompanied by an insurance policy<sup>3)</sup>.

1) "Immediate shipment" implies that a vessel shall be available at the place of loading. The obligation of "prompt unloading" is as a rule considered as being fulfilled when the unloading takes place within three weeks in the case of a sailing vessel and within a fortnight or three weeks in the case of a steamer. The date which in a so-called ice clause (winter clause) is designated by the words "at the first open waters", "at the opening of the navigation", etc., is not considered to have arrived because certain steamers with difficulty have been able to work themselves through the ice, but only when it can be said with reason that navigation can again operate without danger, and that consequently navigation to one or more of the ports in question has in general been reopened.

2) It is an important consequence of the fact that, when a sale has been stipulated as one of payment in cash, the seller, if the purchaser becomes bankrupt before payment has been made, and it can be proved that the goods sold form part of the assets of the bankruptcy estate, is entitled, if the estate is unwilling to make payment in full, to reclaim such goods against refunding disbursements incurred for freight etc. Such a right of reclamation has been granted to the seller by the tribunals, even if in connection with the stipulation of "payment in cash" a short delay of, for example, 8 or 14 days has been granted. In the case of a sale against acceptance the seller, when he draws, is entitled to give the bill of exchange the date of the sending of the goods (the date of the invoice), and acceptance may be demanded on receipt of the goods or the bill of lading.

3) When re-imburement through a bank is made use of, it is somewhat doubtful whether the purchaser is responsible for the bank in question, or whether his obligation as regards the seller is fulfilled when he can prove that he himself has covered his re-imburement in the bank; but it seems necessary to answer the question in the latter sense. On the other hand, if "first class bank re-imburement" has been stipulated, the seller is entitled to reject re-imburement through a house which is not generally considered a first class one, and, if only re-imburement in general has been stipulated, he is entitled to reject re-imburement through a house the solvency of which is open to serious doubt. If the arrival of the bill of lading is delayed owing to the circumstance that it has to pass through a bank situate at another place than that of the purchaser, such bill of lading according to Danish custom is at the risk of the purchaser when the seller has fulfilled his obligation to send the documents as quickly as possible.

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*Additional note concerning difference transactions (time bargains).* At the Exchange of Copenhagen regular time bargains have never been transacted either in goods or in securities, and rules similar to those contained in the German Exchange Law of 22nd June 1896, do not exist in Danish law. On the other hand, owing to the growing importance which is attached to this kind of business abroad, it has not been possible to avoid that commerce in Denmark should have been influenced by the same, and the foreign Exchanges where time bargains are negotiated are being used by Danish traders as well when covering operations as when speculating purposes are concerned. Even when a time bargain proves to be a pure speculating business, a pure transaction in differences — i. e. a contract presenting itself under the aspect of a sale for future delivery by which it is agreed that the obligations of the parties shall consist in the stipulation that the difference between the price agreed on and the price obtaining on the day for delivery shall be paid by the so-called seller if the price of the merchandise rises, but by the so-called purchaser if the price of the merchandise falls, whereas no real delivery of goods is to take place — it is recognised as being valid according to Danish law. It must be admitted that the bargain for differences is not a purchase and a sale, but a hazardous contract nearly related to betting, and Danish law in this matter generally takes the view which, in short, is this that it considers gambling contracts invalid, but betting valid. Nor is there in Danish law any doubt with regard to the legal validity of premium transactions, i. e. sales for delivery involving against payment of a fixed amount (premium) a right for one of the contractors only to withdraw from the contract or to alter its contents.

Hvad foran er bestemt, finder tilsvarende Anvendelse, naar Køberen har forpligtet sig til at betale mod saadant Fragtbrev, som omhandles i § 16.

### d) Kjøbenhavnske Slutsedler.

Som ovf. omtalt, er der — navnlig i Sammenhæng med de til Kjøbenhavns Børs knyttede Voldgiftsudvalg (jvf. S. 21) — af det kjøbenhavnske Grosserer-Societets Komitee for forskellige Handelsbrancher vedtaget Slutseddel-Formularer, paa hvis Bagside findes aftrykt en Række „Almindelige Bestemmelser“.

Disse Bestemmelser have ikke blot Betydning for de enkelte Handler, ved hvilke Formularerne benyttes, og ved hvilke de altsaa indgaa som ligefremme vedtagne Led af Kontrakten, men ogsaa i øvrigt, nemlig som Udtryk for, hvad der i det paagældende Forhold er handelsmæssig Kutyne. De have derhos ikke blot stor Betydning for den indenlandske Handel, men delvis tillige en væsentlig Betydning for Danmarks Handel med Udlandet, ja, nogle af dem endog for Handler mellem Handlende i Udlandet. Saaledes benyttes f. Ex. den danske cif-Slutseddel for Korn ved Sverigs Indkøb i Rusland og Tyskland og ligeledes ved Salg fra Rusland til nogle Hamburger Firmaer, som arbejde paa Skandinavien, New Orleans Bomuldsfrokager sælges til Skandinavien „paa Kjøbenhavns Arbitrage“ o. s. v.

De paa de vedtagne Slutsedler anførte „Almindelige Bestemmelser“ gengives derfor her.

#### Slutseddel for Handler i Korn „in loco“ eller „leveret“ (vedtagen 1909).

##### § 1. *Kvantum og Vejning.*

a) Ved Salg af en Ladning skal Sælgeren afskibe, hvad Skibet kan lade under Dæk indtil 10 pCt. mere eller mindre end det kontraherede Kvantum, og Skibet maa ikke indlade andet eller mere end det nævnte Kvantum. De første 2 pCt. beregnes til Kontraktspris, Resten indtil 8 pCt. reguleres pro et contra til Dagspris paa første Leveringsdag. — Cirka giver ved Salget af et Parti Sælgeren Ret til at levere indtil 2 pCt. mere eller mindre. Hvis Levering finder Sted i flere Partier, gælder cirka-Bestemmelsen kun for den sidste Levering.

b) Ved Salg af en Ladning »fra—til« skal Sælgeren afskibe, hvad Skibet kan lade under Dæk indenfor de fastsatte Grænser. — Kan Skibet lade mere end Maximumskvantum, beregnes Mellemkvantum til Kontraktspris, Resten indtil Maximumskvantum reguleres pro et contra efter Dagspris paa første Leveringsdag. — Salg af et Parti »fra—til« giver Sælgeren Valg af ethvert mellemliggende Kvantum.

c) Ved Salgsbetingelsen frit paa Vogn, frit paa Jærnbanevogn, frit tilkort eller frit ombord erlægges den takstmæssige Betaling for Vejningen af Sælgeren. I alle andre Tilfælde betales Vejningen af Køberen.

##### § 2. *Kvalitet og Kvalitetsvægt.*

Ved Bedømmelsen af en Vare efter Salgsprøve bør tages Hensyn til den Forandring, som Prøven kan være undergaaet ved at henligge eller af andre naturlige Aarsager. — Hvis Kvalitetsvægten er angiven med to Tal, f. Ex. 118/119, lægges Middeltallet til Grund ved Bedømmelsen.

##### § 3. *Vejning.*

Den metriske Vægt fastsættes af autoriseret Vejer eller af et offentligt Pakhusselskab.

##### § 4. *Modtagelsen.*

a) Ved Salg af Varer pr. Jærnbane eller Dampskib i fast Rute skal Modtagelsen være tilendebragt indenfor den Tidsfrist, disses Reglement bestemmer, naar Fragtbrev eller Udleveringsseddel afleveres i behørig Tid hos Køberen. Læsspenge betales af Sælgeren.

b) Til Losning af en Ladning pr. Dampskib tilkommer der Køberen Lossedage efter Coutume for Dampskibe af den paagældende Størrelse.

Til Losning af en Ladning pr. Sejlskib tilkommer der Køberen Lossedage i Overensstemmelse med dansk Sølov.

The rules previously given apply in a corresponding manner when the purchaser has pledged himself to pay against a way bill such as is dealt with in § 16.

#### d) The brokers' notes of Copenhagen.

As has been mentioned above — notably in connection with the Arbitration Committees which are attached to the Exchange of Copenhagen (see p. 21) — the Committee of the Copenhagen Wholesale Society has authorised forms of the brokers' notes for certain branches of commerce, on the back of which are printed a series of "General Regulations".

These regulations are not only of importance for the various transactions in which the forms are used, and in which they are consequently like authorised parts of a contract concluded between the parties, but also as expressing what is commercial custom in the case in question. They are, therefore, not only of great importance for commerce in Denmark, but are also of considerable importance for the commerce of Denmark with other countries, some of them even for transactions between traders abroad. For example, the Danish c. i. f. broker's note applicable to dealings in corn is used when Sweden purchases corn in Russia or Germany, and also when corn is sold from Russia to some firms in Hamburg which do business with Scandinavia; New Orleans cotton seed cakes are sold to Scandinavia "according to the arbitration of Copenhagen", and so on.

The "General Regulations" which are printed on the back of the authorised brokers' notes are therefore reproduced here.

#### Broker's note for dealings in corn "in loco" or "delivered" (authorised 1909).

##### § 1. Quantity and weighing.

a) When selling a cargo the seller shall ship what the vessel can load under deck up to 10 per cent. more or less than the stipulated quantity, and the vessel must not load anything else or more than the stipulated quantity. The first 2 per cent. is calculated at contract price, up to 8 per cent. of the remainder is regulated *pro et contra* at the price of the day on the first day for delivery. — The word "*circa*" (about) used in the sale of a parcel of goods entitles the seller to deliver up to 2 per cent. more or less. If delivery takes place in several instalments, the rule as to the use of "*circa*" only applies to the last instalment.

b) On the sale of a cargo "from — to" the seller shall ship what the vessel can load under deck within the stipulated limits. — If the vessel can load more than the maximum quantity, the intermediate quantity is calculated at contract price, the remainder as far as the maximum quantity is regulated *pro et contra* at the price of the day on the first day for delivery. — The sale of a parcel of goods "from — to" entitles the seller to choose any intermediate quantity.

c) In the case of a sale stipulated free on carriage, free on railway carriage, free carted or free on board, the seller must discharge the payment for weighing at the authorised rate. In all other cases the purchaser pays the weighing expenses.

##### § 2. Quality and weight according to quality.

When merchandise is estimated according to a sample of the sale, the change which the sample may have undergone through storage or owing to other natural causes must be considered. If the weight according to quality is indicated by means of two figures, for example, 118—119, the intermediate figure is used as the basis for the estimate.

##### § 3. Weighing.

The metrical weight is fixed by an authorised weigher or by a public storage company.

##### § 4. Reception of goods.

a) In the case of a sale of goods by railway or steamer running in a fixed itinerary, the reception shall be terminated within the period fixed by the regulations of the railway or steamer, when a way bill or delivery certificate is delivered to the purchaser in due time. The loading expenses are paid by the seller.

b) When unloading a cargo sent by steamer the purchaser is entitled to a period for unloading according to the general custom for steamers of the tonnage in question.

When unloading a cargo sent by a sailing vessel the purchaser is entitled to a period for unloading according to Danish maritime law.

Til Losning af et Parti, som kun udgør en Del af en Ladning, tilkommer der Køberen efter Partiets Størrelse forholdsvis Lossetid med de øvrige Modtagere i Overensstemmelse med foran nævnte Regler, gældende for en Ladning henholdsvis pr. Dampskib eller pr. Sejlskib. — For et Parti pr. Dampskib i fast Rute tilkommer der dog kun Køberen Lossetid efter Skibets Coutume.

c) Ved Salg paa Levering efter Sælgerens Lejlighed frit paa Byvogn eller frit ombord i henhalende Skib, skal Køberen, naar Sælgeren i Forvejen har givet behørigt Varsel om Leveringen, uopholdelig stille Skib eller Byvogn til Sælgerens Disposition paa det af ham anviste Sted, forsaavidt dette er tilgængeligt. Ved Salg paa Levering efter Sælgers Lejlighed frit paa Banevogn skal Køberen, naar Sælgeren i Forvejen har givet behørigt Varsel om Leveringen, uopholdelig stille de fornødne Expeditions-papirer til Sælgerens Disposition, og det paahviler da Sælgeren at stille Banevogn. — Er der givet Køberen en bestemt Tid til Modtagelsen, skal Køberen sørge for, at der gives Sælgeren tilstrækkelig Tid til Levering. — Ved Salg paa Levering paa Købers Anfordring paahviler det Køberen at sørge for rettidig Modtagelse, og Varen skal være disponibel, efterhaanden som Køberens Expeditionsordre fremkommer, og det anviste Leveringssted er tilgængeligt. — Ved Salg paa Levering fra opgivet Skib paahviler det Køberen at sørge for Varens rettidige Modtagelse, naar Partiet i behørig Tid er stillet til hans Disposition. Passerer Partiet Silo, regnes Silotiden for Skibets Lossetid.

d) Mangler i Kvalitet og Kvalitetsvægt skal Køberen ved Salg af Varer pr. Jærnbane eller Skib paatale snarest muligt, efter at Varerne er stillet til hans Disposition. — Ved Salg frit paa Banevogn, Byvogn, frit ombord i Skib, fra Loft eller Silo eller ved Opvejning af et Parti, skal Sælgeren, naar rettidig Anmodning derom fremsættes, give Køberen eller dennes Repræsentant Lejlighed til under Læsningen, Indladningen eller Opvejningen at kontrollere Kvaliteten eller Kvalitetsvægten, samt at udtage Prover til Bedømmelse. — Undlader Køberen at kontrollere Varen, skal han være uberettiget til senere at gøre mulige Kvalitetsmangler gældende.

e) Skal Varerne tilkøres for Sælgerens Regning, kan der ikke fordres leveret mindre Partier end 2000 Kg. af hver Sort.

f) Naar et efter Sælgerens Lejlighed solgt Parti kasseres helt eller delvis, har Sælgeren Ret til inden Leveringsfristens Udlob at paavise een ny Levering i det kasseredes Sted, mod at erstatte Køberen hans bevislig hafte Omkostninger. — Er Partiet solgt paa Købers Anfordring indenfor en vis Tid, har Sælgeren Ret til een ny Levering indenfor 24 Timer, selv om Leveringsfristen derved overskrides.

### § 5. *Sække og Sækkeleje.*

Naar Varer leveres i Sælgerens Sække, blive disse 8 Dage efter Modtagelsen at tilbagelevere i uskadt Stand franco Afsendelsesstedet. I modsat Tilfælde betales sædvanlig Sækkeleje og Erstatning for Beskadigelse.

### § 6. *Forhindring af Levering.*

a) Forhindres Varernes Levering indenfor den i Slutsedlen fastsatte Tid ved Krig, Blokade, Indforselsforbud, Strike, Standsning af indenlandsk Jærnbane, Forsinkelse af Dampskib i fast Rute eller anden force majeure, skal Sælgeren uopholdelig underrette Køberen derom, og denne har da Valget imellem at ophæve Handelen uden Godtgørelse eller at fordrø Levering, saa snart Forholdene tillader det, men skal erklære sig herom indenfor en Frist af 48 Timer.

Lokal Standsning af Trafiken paa eller mellem Jærnbanestationer paa samme Plads berettiger ikke til Annulering.



When unloading a parcel of goods which is only part of a cargo, the purchaser, according to the quantity of his parcel of goods, is entitled to a period for unloading in proportion to that of the other consignees, in accordance with the said regulations applicable to a cargo sent respectively by steamer or by sailing vessel. — For a parcel of goods sent by a steamer running in a regular itinerary, the purchaser is, however, only entitled to a period for unloading according to the custom of the vessel.

e) In the case of a sale of goods the delivery of which is to be effected at the convenience of the seller free to a waggon of the town or free on board a hauling vessel, the purchaser, when the seller has given him in advance reasonable notice for the delivery, shall immediately place a vessel or a waggon of the town at the disposal of the seller at the place indicated by him in so far as this place is of easy access. In the case of a sale of goods the delivery of which is to be effected at the convenience of the seller free on a railway waggon, the purchaser, when the seller has given him in advance reasonable notice for the delivery, shall immediately place the necessary transport documents at the disposal of the seller, and it is then incumbent on the seller to procure the railway waggon. — If a definite period for receiving the goods in question has been granted to the purchaser, he must see that the seller is given sufficient time to effect the delivery. — In the case of a sale of goods the delivery of which is to be effected at the request of the purchaser, it is incumbent on the purchaser to see that he receives the goods in due time, and the goods shall be available successively when the order for delivery of the purchaser arrives, and the indicated place of delivery is accessible. — In the case of a sale of goods the delivery of which is to be effected from a vessel which is indicated, it is incumbent on the purchaser to see that he receives the goods in due time, when the parcel of goods has been duly placed at his disposal. If the parcel of goods passes a silo, the time of the silo is considered as the time of unloading of the vessel.

d) With regard to defects in the quality or of the weight according to the quality, the purchaser, in the case of a sale of goods to be sent by railway or steamer, must present his protest as soon as possible after the goods have been placed at his disposal. — In the case of a sale of goods to be delivered free to a railway waggon, town waggon, free on board a vessel, from a granary or from a silo, or in case of the weighing of a parcel, the seller, when he has been requested to do so in due time, shall give the purchaser or his representative the opportunity, during the loading, shipment or weighing, to test the quality or the weight according to quality, and to select samples for examination. — If the purchaser omits to test the merchandise in question, he loses his right to take advantage subsequently of the possible defects of quality.

c) If the goods are carted at the expense of the seller, no smaller deliveries than 2000 kilos of each kind may be demanded.

f) If a parcel of goods, sold at the convenience of the seller, is entirely or partially rejected, the seller has a right, before the expiration of the period stipulated for delivery, to provide a fresh parcel in the place of the one which has been rejected, against refunding to the purchaser the expenses which he can be proved to have incurred. — If the parcel of goods is sold to be delivered within a certain time at the request of the purchaser, the seller has a right to effect a fresh delivery within 24 hours, even if the period for delivery is thereby exceeded.

#### § 5. *Sacks and the hire of sacks.*

When goods are delivered in sacks belonging to the seller, such sacks must be returned in good condition free to the place of delivery within eight days of the reception of the goods. In the contrary case the usual hire for sacks and compensation for damage are paid.

#### § 6. *Obstacles to delivery.*

a) If the delivery of the goods within the time stipulated in the broker's note is prevented owing to war, blockade, import prohibition, strike, stoppage of the traffic on Danish railways, delay caused by steamers not running as advertised, or owing to some other unforeseen event, the seller shall forthwith inform the purchaser of such occurrence, and the purchaser may then either cancel the contract without compensation, or demand that delivery be effected as soon as circumstances permit, but he has to declare his choice to this effect within 48 hours.

Local interruption of the traffic at or between railway stations situate at the same place does not give a right to cancel transactions.

Varene modtages i saa Tilfælde paa den nærmeste Station mod en Godtgørelse til Køberen af eventuelt forøgede Omkostninger.

b) Havari eller Forlis af Varer med et i Slutsedlen opgivet Skib ophæver Handelen for den beskadigede eller ikke fremkomne Del af Partiet, ved sammenladede Varer pro rata.

#### § 7. Om Betalingsstandsning etc.

Kommer en af de kontraherende Parter efter Købets Afslutning under Konkurs, eller aabnes der Forhandlinger om Tvangsakkord for ham, eller har han standset sine Betalinger, skal Medkontrahenten strax efter, at han er bleven bekendt hermed, opfordre den anden Part til at stille betryggende Sikkerhed og har, saafremt en saadan Sikkerhed ikke strax stilles, Valget imellem enten at annullere Kontrakten eller at lade Værdien af Varene fastsætte ved Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg, eller foretage behørigt Dækningskøb eller Dækningssalg, og i saa Fald at forlange den opstaaede Prisforskel godtgjort.

#### § 8. Tvistigheder.

I. Formen af Varen at være ukontraktmæssig, og agter Køberen i den Anmeldning at gøre sin Ret gældende, skal han snarest muligt underrette Sælgeren derom.

Bor Sælgeren paa en anden Plads end Køberen, skal denne Underretning gives telegrafisk. Har Sælgeren en anmeldt Repræsentant, derunder Kontrollør, til Stede, er det tilstrækkeligt, at Køberen giver Underretning til Repræsentanten.

Hvis Sælgeren ikke er repræsenteret, eller Repræsentanten nægter at udtage Prover eller fastsætte Kvalitetsvægten, eller Køberen og Repræsentanten ikke kan blive enige om Provetagningen eller Vægtkonstateringen, foretages denne af tvende uvildige og kyndige Mænd, udmeldte dertil, i Kjøbenhavn af Kjøbenhavns Bedømmelses og Voldgifts-Udvalg for Kornhandelen og andetsteds af Retten eller Øvrigheden. Køberen og Sælgeren eller deres Repræsentanter udtager og forsegler i Forening Prover, der ledsagede af behørig Attest indsendes til Børskontoret i Kjøbenhavn med en Fremstilling af de formentlige Mangler og Begæring om Bedømmelse af ovennævnte Udvalg. Hvis Disputen angaar Varernes Sundhed, skal Proven indsendes uopholdelig.

Et Spørgsmaal, om Kornet er sundt, besvares kun bekræftende eller benægtende.

Ved Kvalitetsmangler — herunder ikke indbefattet Sundhed og Kvalitetsvægt — der tilsammen ikke ansættes til over 2 pCt. af Fakturaprisen, er Køberen pligtig til at modtage Partiet imod at erholde den tilkendte Godtgørelse. Ansættes Kvalitetsmanglerne til mere end 2 pCt., er Køberen berettiget til at nægte Modtagelse og gøre sin Ret ifølge Slutsedlen gældende, dog bliver Sælgerens Ret i Henhold til § 4 f. ham forbeholdt.

Af Kjøbenhavns hollandske Borsvægt med Tragt saavel som af Thieles Bismervægt med Tragt findes Normal-Eksemplarer paa Børskontoret i Kjøbenhavn.

Sker Indsigelse mod Rigtigheden af det benyttede Vejeapparat, bliver det under Forsegling at indsende til Børskontoret for at sammenholdes med det tilsvarende Normal-Eksemplar, hvilken Undersøgelse foretages af tvende af Udvalget beskikkede Mænd, hvis Erklæring derom skal være afgørende.

II. Berettiger Slutsedlen til flere Leveringer, behandles hver Levering som en særskilt Kontrakt.

III. Enhver Tvistighed angaaende denne Handel og Slutseddel, det være sig angaaende Kvaliteten, Parternes Fremgangsmaade eller iøvrigt skal uden Undtagelse forelægges og afgøres af Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg for Kornhandelen.

Udvalgets Kendelse skal være endelig og verbindende for Parterne, saaledes at den ikke af nogensomhelst Grund — det være sig Realitets- eller Formalitetsgrunde — skal kunne underkendes eller tilsidesættes af Domstolene.

The goods are in such ease received at the nearest station against compensation being paid to the purchaser for the increase of expenses which he may have incurred.

b) Average or loss of goods sent by a vessel indicated in the broker's note, brings about the cancellation of the transaction in so far as that part of the goods is concerned which has been damaged or which has not arrived, and in the case of goods loaded with other goods in one lot, *pro rata*.

#### § 7. *Suspension of payment, etc.*

If after the conclusion of a sale one of the contracting parties becomes bankrupt, or if negotiations with a view to obtaining a composition for him have been started, or if he has suspended his payments, the other contracting party, immediately on being informed of such occurrence, shall call upon him to give sufficient security, and, in case such security is not immediately given, he has the choice either to cancel the contract, or to have the value of the goods estimated by the Valuation and Arbitration Committee of Copenhagen, or to undertake a sufficient covering purchase or covering sale, and in such case to claim reimbursement of the difference in the price which may arise.

#### § 8. *Disputes.*

I. If it is supposed that the goods sold are not in accordance with the contract, and if the purchaser owing to such fact intends to take advantage of his right, he must, as soon as possible, inform the seller of his intention to do so.

If the seller is domiciled at another place than that of the purchaser, such information shall be sent by telegraph. If the seller has an authorised representative, including comptroller, on the spot, it is sufficient that the purchaser informs the representative.

If the seller is not represented, or the representative refuses to select samples or to fix the weight according to quality, or if the purchaser and the representative cannot agree with regard to the selection of samples or the fixing of the weight, this has to be undertaken by two impartial and competent men, nominated for this purpose, in Copenhagen by the Valuation and Arbitration Committee of Copenhagen for the Corn Trade, and elsewhere by the local tribunal or authority. The purchaser and the seller, or their representatives, select and seal together the samples, which, accompanied by a regular certificate, are sent to the Exchange Office of Copenhagen with an explanation of the alleged defects and a request for an estimate to be made by the said Committee. If the dispute concerns the wholesomeness of the goods, the sample shall be sent forthwith.

A question as to whether grain is wholesome or not, can only be answered by a simple affirmative or negative.

In the case of defects of quality — excluding wholesomeness and weight according to quality — which together are not estimated at more than 2 per cent. of the amount of the invoice, the purchaser is bound to receive the goods against obtaining the awarded compensation. If the defects of quality are estimated at more than 2 per cent., the purchaser is entitled to reject the goods and to take advantage of his right according to the broker's note; the seller, however, retains his right according to § 4 f.

At the office of the Exchange in Copenhagen are to be found normal specimens of the Dutch Exchange scales of Copenhagen with funnel, as well as of Thiel's Bismar scales with funnel.

If the correctness of the weighing apparatus used is contested, such apparatus shall be sent sealed to the office of the Exchange in order to be compared with the corresponding normal specimen; this examination is undertaken by two men nominated by the Committee, and their declaration in the matter is considered decisive.

II. If the broker's note in question authorises several deliveries, each delivery is treated as a separate contract.

III. Any dispute concerning this branch of commerce and broker's note, whether it concerns the quality, the conduct of the parties, or any other point at issue, shall without exception be submitted to and decided on by the Valuation and Arbitration Committee of Copenhagen for the Corn Trade.

The decision of the Committee is final and binding on the parties, so that for no reason whatever — whether it be one bearing on the merits of the case or on formalities connected with it — can such decision be quashed or disregarded by the tribunals.

Undlader nogen at opfylde Udvalgets Kendelse, er Udvalget berettiget til at foranledige dette offentlig bekendtgjort ved Opslag paa Borsen. Udvalget kan da, saalænge Kendelsen ikke er opfyldt, ikke behandle nogen Sag, hvori Vedkommende er Part, medmindre Sagen angaar en Forretning, afsluttet forinden Bekendtgørelsen har fundet Sted.

Skulde Udvalget skønne, at Tvisten ikke egner sig til Udvalgets Afgørelse, afgives Kendelse herom, hvorefter Parterne kunne gaa Retsvejen.

#### § 9. *Handler om Majs.*

Samtlige denne Slutseddels Forskrifter komme ogsaa til Anvendelse ved Handler om Majs med den Modifikation, at Køberen, naar Manglerne uden Hensyn til, hvorfra disse stammer, ikke overstiger 2 pCt. af Fakturaprisen, er pligtig til at modtage Majsen mod at erholde den Godtgørelse, som Udvalget fastsætter, medens han, naar Manglerne overstiger 2 pCt. af Fakturaprisen, er berettiget til at nægte Modtagelsen og gøre sin Ret ifølge Slutsedlen gældende.

#### Slutseddel for Handler i Korn „frit om Bord“ (vedtagen 1909).

##### § 1. *Kvantum.*

a) „Cirka“ giver Køberen Ret til ved søværts Afskibning at forlange leveret indtil 5% mere eller mindre end det nævnte Kvantum.

b) „Fra — til“ giver Køberen Valget af ethvert mellemliggende Kvantum.

c) Er Partiet ikke modtaget den fastsatte sidste Modtagelsesdag, gælder Handelen ved „cirka“ for det nævnte Kvantum og ved „fra — til“ for Mellemkvantum.

##### § 2. *Kvalitet og Kvalitetsvægt.*

a) Ved Bedømmelse af en Vare efter Salgsprøve bør tages Hensyn til den Forandring, som Proven kan være undergaaet ved at henligge eller af andre naturlige Aarsager. Ved Salg, hvor Prove er betinget leveret inden en vis Tid, skal Indsigelse mod Proven ske senest 2 Gange 24 Timer, Son- og Helligdage ikke medregnede, efter at Proven er kommen Køberen i Hænde, og derefter er der forbeholdt Sælgeren en lignende Frist til at præstere en anden Prove; lægge Postforholdene Hindringer i Vejen, udstrækkes denne Frist, indtil Postforholdene tillade Indsendelsen.

b) Kvalitetsvægten bestemmes i hele eller halve Pund efter Københavns hollandske Borsvægt, for saa vidt Kvalitetsvægten ifølge Kontrakten ikke skal fastsættes paa anden Maade. Kvalitetsvægten bedømmes paa Leveringsstedet. Hvis Kvalitetsvægten er angivet med to Tal f. Eks. 118/119, lægges Middeltallet til Grund for Bedømmelsen.

c) Køberen behøver ikke at erklære sig om Partiets Kontraktmæssighed og Sælgeren ej heller at forevise Partiet, førend Varerne skal modtages —, hvis til Skib altsaa efterhaanden som Varerne leveres om Bord.

Er Varerne ikke kontraktmæssige, kan Sælgeren forlange en Leveringsfrist af indtil 3 Dage imod at godtgøre Køberen de denne derved forårsagede Omkostninger.

d) Naar Køberen uden Kontrol lader Sælgeren besørge Indladningen, skal han være uberettiget til senere at gøre mulige Kvalitetsmangler gældende.

##### § 3. *Metriske Vægt.*

Den metriske Vægt fastsættes af autoriseret Vejer eller offentligt Pakhus-selskab.

##### § 4. *Levering.*

a) Ved Salg „frit om Bord“ forstaas, at Varerne skulle leveres uden nogen Udgift for Køberen om Bord i Skibet, hvor dette tilladet kan flyde og gaa til Søs,

If any person neglects to comply with a decision of the Committee, the Committee is authorised to see that this fact is published by means of a placard at the Exchange. The Committee, so long as its decision has not been complied with, may not deal with any other dispute in which the person in question is one of the parties, unless the dispute concerns a business transaction which had been concluded before the publication took place.

If the Committee should be of opinion that a dispute is not suitable for settlement by the Committee, an award is rendered to that effect, whereupon the parties may go before the tribunals.

### § 9. *Dealings in Maize.*

All the regulations of this broker's note apply also to dealings in maize, subject to the modification that the purchaser, when the defects, without having regard to their origin, do not exceed 2 per cent. of the amount of the invoice, is bound to accept the goods against obtaining compensation which is fixed by the Committee, whereas, when the defects exceed 2 per cent. of the amount of the invoice, he is entitled to reject the goods, and to take advantage of his right according to the broker's note.

**Broker's note for dealings in corn "free on board" (authorised 1909).**

#### § 1. *Quantity.*

a) The term "circa" entitles the purchaser, in case of shipment by sea, to claim delivery up to 5 per cent. more or less than the stipulated quantity.

b) When the clause "from — to" is used, the purchaser is entitled to choose any intermediate quantity.

c) If a parcel of goods is not received on the last day stipulated for such reception, a transaction where the term "circa" is used applies to the stipulated quantity, and where "from — to" is used, to the intermediate quantity.

#### § 2. *Quality and weight according to quality.*

a) In the estimation of merchandise according to a sale sample, due notice shall be taken of the change which the sample may have undergone through storage or owing to other natural causes. In the case of a sale where it has been stipulated that a sample shall be delivered within a certain time, objection against such sample shall be made at the latest within twice twenty-four hours, Sundays and holidays not included, of the time at which the sample has come into the purchaser's possession, and after this the seller is entitled to a similar period within which to procure another sample; if the postal arrangements prevent it, this period is extended until the sending of the sample can be effected by post.

b) The weight according to quality is fixed in whole or half pounds according to the Dutch Exchange scales of Copenhagen, provided that the contract does not fix the weight according to quality in some other manner. The weight according to quality is estimated at the place of delivery. If the weight according to quality is indicated by means of two figures, for example, 118—119, the mean figure will be the basis of the estimate.

c) The purchaser need not declare whether a parcel of goods is in accordance with the stipulations of the contract or not, nor need the seller show the parcel in question, until the moment has arrived at which the goods are to be received, and consequently, when they are to be delivered on board a vessel only as the goods are delivered on board.

If the goods in question are not in conformity with the contract, the seller may demand a period for delivery of at most three days, against indemnifying the purchaser for the expenses which he may have incurred owing to the goods not being as stipulated.

d) If the purchaser permits the seller to undertake the loading, the former will not be entitled to take advantage subsequently of possible defects of quality.

#### § 3. *Metrical weight.*

The metrical weight is fixed by an authorised weigher or by a public storehouse company.

#### § 4. *Delivery.*

a) A sale designated as "free on board" is understood to mean that the goods in question shall be delivered, without any expense to the purchaser, free on board

forsaavidt Skibet ikke er over 10% større end det omkontraherede Kvantum, hvilket forlods skal indlades. Er Skibet større, bærer Køberen alle Lægterpenge. Naar Skibet er indenfor den fastsatte Størrelse, bærer Sælgeren den Del af Lægter-Risikoen, som ikke af Køberen kan dækkes under de kjøbenhavnske Sø-Assurance-Kompagniers almindelige Betingelser for Assurance paa Kornladninger.

I Stedet for at faa Varerne leverede frit om Bord skal Køberen være berettiget til af Sælgeren at fordre Levering helt eller delvis i Land indenfor Ladestedets Grænser imod kontant Betaling ved Modtagelse og imod at erholde godtgjort de eventuelt for Afskiberen ved denne Leveringsmaade sparede Omkostninger eller mod at betale de forøgede Omkostninger. Cirka-Retten bortfalder i saa Tilfælde.

b) Ved en god Havn forstaas et Udskebningssted, der tillige er Toldsted, og hvor et Skib, hvis Størrelse i Henhold til § 4a svarer til det solgte Kvantum, sikkert og bekvemt kan indtage Ladning og tilladet kan flyde og gaa til Søs.

#### § 5. *Modtagelse.*

a) Sælgeren skal præstere Levering paa Købers Anfordring indenfor den fastsatte Leveringstid.

b) Ved Levering til Skib kan Køberen forlange Afskibning præsteret indenfor den i dansk Solov fastsatte Tidsfrist.

c) Belobet er forfaldent til Betaling senest den sidste Modtagelsesdag, medmindre Leverandøren denne Dag har modtaget Kvittring og — eller Konnossement.

d) Er Skibet, som skal lade, afgaaet til Ladestedet i behørig Tid, d. v. s. fra dansk til dansk Havn eller svensk Sundhavn eller omvendt mindst 8 Dage for Modtagelsestidens Udlob, men ikke ankommet saa betimeligt, at Modtagelsen kan tilendebringes til den bestemte Tid, har Køberen en Frist af ikke over 14 Dage.

Hvis Skibet paa Rejsen til Ladestedet lider Havari eller forliser, udstrækkes ovennævnte Frist til ikke over 1 Maaned, alt imod at Køberen paa den fastsatte sidste Modtagelsesdag betaler det omtrentlige Beløb (til endelig Afregning ved Modtagelsen) og fra den Dag svarer 4 Ore pr. Centner halvmaanedlig for Lagringsomkostninger, som indbefatte Pakhusleje, Brandassurance, Konservering og Svind. Paabegyndte 15 Dage regnes for en halv Maaned.

e) Er Partiet solgt at modtage „senest“ en vis Dag, gælde ovennævnte Undertagelser ikke.

#### § 6. *Forhindring af Levering.*

Odelægges Varerne ved Ildbrand, Stormflod eller anden ulykkelig Begivenhed, forinden de kontraktmæssig skulle være modtagne, skal Sælgeren, naar han straks derom underretter Køberen, være fritagen for Levering imod at erstatte ham mulig Prisforskel, der reguleres efter den paa Kjøbenhavns Børs samme Dag, Efterretningen om Odelæggelsen indløber, gældende Pris for lignende Varer paa samme Betingelser. Dersom Krig, Blokade eller Udforselsforbud skulde forhindre Leveringen, er denne Kontrakt eller enhver uopfyldt Del af samme annulleret.

Hvis Strike paa Afladepladsen forhindrer rettidig Afskibning, forlænges Afladefristen med 3 Uger.

Dersom Afskibningen ikke har kunnet finde Sted indenfor den forlængede Tidsfrist, har Køberen Valget mellem at ophæve Handelen uden Godtgørelse eller at fordre prompt Afskibning efter Strikens Ophor.

Sælgeren skal uden Ophold underrette Køberen om den indtraadte Strike, og om han præsterer Levering indenfor den forlængede Tidsfrist.

Kan Levering ikke ske, har Køberen indenfor en Frist af 48 Timer at erklære, om han ophæver Handelen eller fordrer senere Levering.

the ship where, loaded, she can float and go to sea, provided the ship is not of greater capacity than 10 per cent. beyond the quantity agreed upon which is to be loaded in advance. If the ship is larger, all the expenses of lighterage are at the charge of the purchaser. If the tonnage of the ship is within the stipulated limit, the seller bears that part of the risk of lighterage which cannot be covered by the purchaser according to the general rules for the insurance of cargoes of corn as fixed by the marine insurance companies of Copenhagen.

Instead of obtaining the goods delivered free on board, the purchaser is entitled to demand of the seller that he shall effect delivery wholly or in part on land within the boundaries of the place of loading, against payment in cash on the receipt of the goods, and subject to obtaining compensation in respect of expenses which the seller may eventually have saved through this mode of delivery, or paying the augmented expenses. The right incidental to the term "cirea" does not exist in such a case.

b) By a good port is understood a loading place having a Custom House, and where a ship, the tonnage of which according to § 4a corresponds with the quantity sold, can safely and conveniently be loaded, and being loaded can float and go to sea.

#### § 5. *Reception of goods.*

a) The seller shall effect delivery at the request of the purchaser within the stipulated time for delivery.

b) When delivery is effected on board a ship, the purchaser can claim that the loading shall be completed within the period which is established by Danish Maritime Law.

c) The amount is due for payment at the latest on the last day fixed for receiving the goods, unless the seller has not on this day received the receipt and/or bill of lading.

d) If the ship which is to load has left for the loading place in due time, i. e. from one Danish port to another or to a Swedish port of the Sund, or *vice versa*, at least eight days before the expiration of the period fixed for the reception, but has not arrived so early that the reception of the goods can be completed within the stipulated time, the purchaser has a period not exceeding a fortnight.

If the ship on her voyage to the place of loading suffers damage or is lost, the above mentioned period is extended to one month, but no more, provided that the purchaser, on the last day fixed for receiving the goods, pays the approximate amount (to be finally settled on delivery), and from that day pays 4 öre per hundred-weight every half month for consignment expenses, which include warehouse rent, fire insurance, preservation and shrinkage. Fifteen days which have commenced to run are counted as half a month.

e) If the goods are sold to be received "at the latest" on a certain day, the above mentioned exceptions do not apply.

#### § 6. *Obstacles to delivery.*

If the goods are destroyed by fire, inundation or other fortuitous occurrence before the time at which according to contract they are to be received, the seller, when he immediately informs the purchaser of such occurrence, is excused from effecting delivery, subject to compensating the purchaser for any possible difference in the price, which is fixed according to the price paid for similar goods on the same conditions, and obtaining at the Exchange of Copenhagen on the day on which the news of the destruction arrives. If war, blockade or export prohibition prevents delivery, the contract, or any part of it which has not been performed, is cancelled.

If a strike at the place of loading prevents shipment in due time, the period for loading is extended for three weeks.

If it has been impossible to effect the loading within the prolonged period, the purchaser can either cancel the transaction without obtaining any damages, or he can demand prompt shipment on the cessation of the strike.

The seller shall forthwith inform the purchaser of the occurrence of the strike and whether he intends to effect delivery within the prolonged period.

If delivery cannot take place, the purchaser must, within forty-eight hours, declare whether he cancels the contract or demands that delivery be effected later on.

§ 7. Om *Betalingsstandsning* etc.

Kommer en af de kontraherende Parter efter Købets Afslutning under Konkurs, eller aabnes der Forhandlinger om Tvangsakkord for ham, eller har han standset sine Betalinger, skal Medkontrahenten, straks efter at han er bleven bekendt hermed, opfordre den anden Part til at stille betryggende Sikkerhed, og har, saafremt en saadan Sikkerhed ikke straks stilles, Valget imellem enten at annullere Kontrakten eller at lade Værdien af Varerne fastsætte ved Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg, eller foretage behørigt Dækningskøb eller Dæknings salg og i saa Fald at forlange den opstaaede Prisforskel godtgjort.

§ 8. *Twistigheder*.

1. Kvalitetsdifferencer ved Afskibning fra indenrigsk Sted.

a) Kan Parterne ikke enes om Varernes Kontraktmæssighed, udtages nøjagtigst mulige Gennemsnitsprover, — eventuelt ved 2 af Retten eller Øvrigheden udmeldte uvildige og til Hvervet kyndige Mænd. De udtagne Prover, forsynede med Udtagernes Segl og ledsagede af behørig Attest, samt Køberens Fremstilling af de formentlige Mangler, indsendes uophødelig til Kjøbenhavns Bedømmelses- og Voldgifts- Udvalg for Kornhandelen med Anmodning om Bedømmelse.

b) Et Spørgsmaal, om Kornet er sundt, besvares kun bekræftende eller nægtende. Ved andre Kvalitetsmangler — heri ikke indbefattet Sundhed og Kvalitetsvægt — naar disse tilsammen ikke ansættes over 2 pCt. af Fakturaprisen, er Køberen forpligtet til at modtage Partiet imod at erholde den tilkendte Godtgørelse.

c) Til at bestemme Partiets Kvalitetsvægt skal benyttes Kjøbenhavns hollandske Borsvægt, medmindre Naturalvægten ifølge Kontrakten skal fastsættes paa anden Maade. Sker Indsigelse mod Rigtigheden af det benyttede Vejeapparat, bliver dette under Forsegling at indsende til Borskontoret for at sammenholdes med det tilsvarende Normal-Eksemplar. Denne Undersøgelse foretages af tvende af Udvalget beskikkede Mænd, hvis Erklæring derom skal være afgørende. Opstaar der Uoverensstemmelse angaaende Kvalitetsvægten paa Leveringsstedet, begæres af Retten eller Øvrigheden udmeldt tvende uvildige Mænd, der er kyndige i Vægtens Brug; disse Mænd, der om fornødent tilkalder en Opmand, har at fastsætte Partiets Vægt og herom afgive deres skriftlige Erklæring, hvilken skal være endelig afgørende for Parterne under Forbehold af, at Vejeapparatets Rigtighed ikke bestrides.

Befindes Kornet at være usundt, eller er Manglen i Kvalitetsvægten større end tilladt, eller er de andre Kvalitetsmangler større end i § 8, 1b bestemt, er Køberen, naar han samme Dag, som Udfaldet af Bedømmelsen meddeles ham, giver Sælgeren skriftlig Underretning, berettiget til at nægte Modtagelse og gøre sin Ret ifølge Slutsedlen gældende.

II. Kvalitetsdifferencer ved Afskibning fra udenrigsk Sted.

Ved Afskibning fra udenrigsk Sted skal der i Tilfælde af Disput ved Indladningen tages lovligt Skon over Varerne, og den af Skonnet afgivne skriftlige Erklæring skal være endelig og forbindende for Parterne.

Erklærer Skonnet, at Kornet er usundt, at Manglen i Kvalitetsvægten er større end tilladt efter Kontrakten, eller at de andre Kvalitetsmangler tilsammen udgør mere end 2 pCt. af Fakturaprisen, er Køberen berettiget til at nægte Modtagelsen og gøre sin Ret ifølge Slutsedlen gældende. Overstiger Kvalitetsmanglerne — heri ikke indbefattet Sundhed og Kvalitetsvægt — ikke 2 pCt. af Fakturaprisen, er Køberen pligtig til at modtage Varerne imod at erholde den Godtgørelse, som Skonnet fastsætter.

III. Berettiger Slutsedlen til flere Leveringer, behandles hver Levering som en særskilt Kontrakt.

IV. Enhver Twistighed angaaende denne Handel og Slutseddel, det være sig angaaende Kvaliteten, Parternes Fremgangsmaade eller iøvrigt, skal uden Undertagelse forelægges og afgøres af Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg for Kornhandelen.



### § 7. *Suspension of payment, etc.*

If after the conclusion of the sale one of the contracting parties becomes bankrupt, or negotiations with a view to obtaining composition for him are started, or he has suspended his payments, the other contracting party, immediately on having been informed of such occurrence, shall ask him to give sufficient security, and, in case such security is not immediately given, can either cancel the contract or let the value of the goods be estimated by the Valuation and Arbitration Committee of Copenhagen, or enter into a sufficient covering purchase or covering sale, and in such case demand the difference in the price resulting from the transaction.

### § 8. *Disputes.*

I. Differences of quality existing at the time of shipment from a Danish port.

a) If the parties cannot agree as to whether the goods correspond with the terms of the contract, average samples, which shall be as exact as possible, are selected — eventually by two impartial men who have been nominated by the tribunal, and who are competent for the task. The selected samples, provided with the seals of those who have selected them, and accompanied by a regular certificate, together with the purchaser's description of the alleged defects, are immediately sent to the Valuation and Arbitration Committee for the Corn Trade which is operating in Copenhagen, requesting the Committee to make an estimate of such samples.

b) The question whether the corn is wholesome or not can only be answered by a simple affirmative or negative. In the case of other defects of quality — not including wholesomeness and weight according to quality — when these together are not estimated at more than 2 per cent. of the invoice amount, the purchaser is bound to take the goods and to accept the compensation awarded.

c) In order to determine the weight according to quality of the goods, the Dutch Exchange scale of Copenhagen shall be used, unless according to the contract the natural weight is to be fixed in some other manner. If the correctness of the weighing apparatus used is contested, this shall be sent under seal to the Exchange Office, in order that it may be compared with the corresponding normal specimen. This examination is undertaken by two men nominated by the Committee, whose award in the matter is decisive. If a dispute with regard to the weight according to quality arises at the place of delivery, the tribunal or the authority may be requested to appoint two impartial men who are experts in the use of scales; these men who, if necessary, call upon an umpire to assist them, have to fix the weight of the goods and to give their award in writing, which is finally binding on the parties, provided that the correctness of the weighing apparatus is not contested.

If the corn is found to be unwholesome, or if the defect of the weight according to quality exceeds what is permitted, or if the other defects of the quality exceed what is laid down by § 8, I b, the purchaser, when on the same day on which he is informed of the result of the estimate, sends the seller a communication in writing, is entitled to reject the merchandise, and to take advantage of his right according to the broker's note.

II. Differences of quality in the case of shipments from foreign places.

In the case of goods shipped from foreign places, any dispute with regard to the shipment shall be submitted to legal experts on merchandise, and the written decision of the experts operating in the case shall be final and binding on the parties.

If the experts declare that the corn is unwholesome, that the deviation of the weight according to quality is greater than what is allowed according to the contract, or that the other defects of quality exceed 2 per cent. of the invoice amount, the purchaser is entitled to reject the merchandise and to take advantage of his right according to the broker's note. If the defects of quality — not including wholesomeness and weight according to quality — do not exceed 2 per cent. of the invoice amount, the purchaser is bound to receive the goods and to accept the compensation fixed by the experts.

III. If the broker's note authorises several deliveries, each delivery is considered as a separate contract.

IV. Any dispute concerning this branch of trade and the broker's note, whether it be with regard to the quality, the conduct of the parties or any other matter, shall without any exception be submitted to and settled by the Valuation and Arbitration Committee for the Corn Trade operating in Copenhagen.

Udvalgets Kendelse skal være endelig og forbindende for Parterne, saaledes at den ikke af nogensomhelst Grund — det være sig Realitets- eller Formalitetsgrunde — skal kunne underkendes eller tilsidesættes af Domstolene.

Undlader nogen at opfylde Udvalgets Kendelse, er Udvalget berettiget til at foranledige dette offentlig bekendtgjort ved Opslag paa Børsen. Udvalget kan da, saalænge Kendelsen ikke er opfyldt, ikke behandle nogen Sag, hvori Vedkommende er Part, medmindre Sagen angaar en Forretning, afsluttet forinden Bekendtgørelsen har fundet Sted.

Skulde Udvalget skønne, at Tvisten ikke egner sig til Udvalgets Afgørelse, afgives Kendelse herom, hvorefter Parterne kunne gaa Retsvejen.

### **Slutseddel for Handler i Korn „inklusive Fragt“ eller „inklusive Fragt og Assurance“ (cif) (vedtagen 1909).**

#### **§ 1. Kvantum.**

a) Ved Salg af „en Ladning“ skal Sælgeren afskibe, hvad Skibet kan lade under Dæk, indtil 10 pCt. mere eller mindre end det kontraherede Kvantum, og Skibet maa ikke indlade andet eller mere end dette Kvantum.

Ved Salg af „et Parti“ har Sælgeren Ret til at afskibe under Dæk indtil 5 pCt. mere eller mindre. Hvis Afskibning finder Sted i flere Partier, gælder cirka-Bestemmelsen kun for den sidste Afskibning.

Hvis der afskibes mere eller mindre end det kontraherede Kvantum, beregnes saavel ved Ladninger som ved Partier de første 2 pCt. til Kontraktprijs, Resten henholdsvis indtil 8 og 3 pCt. reguleres pro et contra til Dagspris paa Afskibningsdagen.

b) Ved Salg af en Ladning „fra—til“ skal Sælgeren afskibe, hvad Skibet kan lade under Dæk indenfor de fastsatte Grænser. Kan Skibet lade mere end Maksimumskvantum, beregnes Mellemkvantum til Kontraktprijs, Resten indtil Maksimumskvantum reguleres pro et contra efter Dagspris paa Afskibningsdagen.

Ved Salg af Parti „fra—til“ har Sælgeren Ret til at afskibe ethvert mellemliggende Kvantum, nanset Skibets eller Skibenes Størrelse.

#### **§ 2. Kvalitet og Kvalitetsvægt.**

Ved Bedømmelse af en Vare efter Salgsprøve bor tages Hensyn til den Forandring, som Proven kan være undergaaet ved at henligge eller af andre naturlige Aarsager. — Hvis Kvalitetsvægten er angiven med to Tal, f. Eks.  $118\frac{1}{119}$ , lægges Middeltallet til Grund for Bedømmelsen.

#### **§ 3. Skib, Afskibning og Losning.**

Sælgeren er forpligtet til at afskibe med godt, forsvarligt Skib, med hvilket Assurance kan tegnes til gangbar Præmie. Sejlskib, paa over 60 Netto Register-Tons, skal være klassificeret mindst  $\frac{5}{6}$  I. I. Bureau Veritas eller A I i Engelsk, Germansk eller Amerikansk Lloyd eller A 2\* Norske Veritas. Dampskibe af Træ skal have Klasse, som mindst svarer til foranstaaende Regler for Sejlskibe.

Ved »prompt Afskibning« forstaas, at Afskibning med Dampskib skal være tilendebragt senest 14 Dage og med Sejlskib senest 3 Uger fra Slutsedlens Dato.

Konnossementets Dato er at betragte som Bevis for Afskibningsdatoen, medmindre der foreligger afgjort Sandsynlighed for urigtig Datering.

Sælgeren har snarest efter tilendebragt Afskibning at give Underretning herom til Køberen; om Damperladninger skal Underretningen gives telegrafisk. Undlades dette, kan Køberen fordrø det derved bevisligt forårsagede Tab erstattet. — Maatter, leverede til Skibets Garnering, beregnes ikke i Fakturaen, men holdes til Sælgerens Disposition.

Losning af Damper skal foregaa saa hurtigt, som Skibet kan levere, indenfor almindelig Arbejdstid.

The decision of the Committee is final and binding on the parties, so that for no reason whatever — be it one bearing on the merits of the case or on formalities connected with it — can their decision be quashed or disregarded by the tribunals.

If any person omits to comply with the Committee's decision, the Committee is authorised to see that such disregard is published by means of a placard at the Exchange. The Committee cannot then, so long as its decision has not been complied with, deal with any other dispute in which the person in question is one of the parties, unless the dispute concerns a transaction which had been concluded before the publication took place.

If the Committee is of opinion that the dispute is not suitable for settlement by it, the Committee gives an award to that effect, whereupon the parties may go before the tribunals.

**Broker's note for dealings in corn "including freight" or "including freight and insurance" (c. i. f.) (authorised 1909).**

**§ 1. Quantity.**

a) In the case of a sale of "a cargo" the seller must ship what the vessel can load under deck up to 10 per cent. more or less than the stipulated quantity, and the vessel must not load anything else or more than this quantity.

When "a parcel of goods" is sold, the seller has a right to ship under deck up to 5 per cent. more or less. If shipment takes place in several consignments, the rule based on the term "eirea" only applies to the last shipment.

If more or less than the stipulated quantity is shipped, the first 2 per cent., as well in the case of cargoes as when certain parcels are concerned, is calculated according to contract price, the remainder, respectively up to 8 and 3 per cent. is regulated *pro et contra* according to the current price on the day of loading.

b) In the case of a sale of a cargo according to the clause "from—to", the seller must ship what the vessel can load under deck within the stipulated limits. If the vessel can load more than the maximum quantity, the intermediate quantity is calculated according to contract price, the remainder up to the maximum quantity is regulated *pro et contra* according to the current price on the day of loading.

When a parcel of goods is sold according to the clause "from—to", the seller has a right to ship any intermediate quantity, without having regard to the tonnage of the vessel or of the vessels.

**§ 2. Quality and the weight according to quality.**

When an estimate is made of merchandise according to a sale sample, the change which the sample may have undergone through storage or owing to some other natural cause, must be considered. — If the weight according to quality is indicated by means of two figures, for example 118—119, the mean figure is the basis of the estimate.

**§ 3. Vessel, loading and unloading.**

The seller is bound to freight a good and reliable vessel, the cargo of which can be insured at the current premium. A sailing vessel of more than 60 Register tons net shall be classified at least at 5—6 I. I. of the Bureau Veritas, or A I of the English, German or American Lloyd or A 2\* of the Norwegian Veritas. Wooden steamers shall be classified so that their classes at least correspond to the rules just mentioned for sailing vessels.

By the term "prompt loading" is understood that the loading on a steamer shall be completed at the latest within 14 days, and on a sailing vessel at the latest within three weeks of the date of the broker's note.

The date of the bill of lading is to be considered as proof of the date of the shipment, unless there is a decided probability that the bill of lading has been wrongly dated.

Immediately on the completion of the loading it is incumbent on the seller to inform the purchaser that such completion has taken place; similar information about cargoes sent by steamer must be telegraphed. If this is omitted, the purchaser can claim that losses arising out of the omission shall be made good. — Mats furnished for the dunnage of the vessel are not included in the invoice amount, but are kept at the disposal of the seller.

Unloading of steamers shall take place as quickly as the ship can deliver the goods, within the customary time of working.

Losning af Sejlskib foregaar i Overensstemmelse med dansk Solov.

Til Losning af et Parti, som kun udgør Del af en Ladning, tilkommer der Køberen efter Partiets Størrelse forholdsvis Lossetid med de øvrige Modtagere i Overensstemmelse med foran nævnte Regler.

Hvis Strike eller Lock-out bevislig forhindrer rettidig Losning og Varernes forsvarlige Håndbringen, er Køberen ikke ansvarlig for Overliggedagspenge for det derved foranledigede Ophold.

#### § 4. *Assurance.*

Ved Salg „inklusive Fragt“ skal Sælgeren drage Omsorg for, at Skibets Navn bliver Køberen meddelt saa betimelig, at denne kan tegne Assurance, forinden Indladning paabegyndes. Ved Salg „inklusive Fragt og Assurance“ skal Sælgeren for Fakturabeløbet med Tillæg af 5 pCt. give Police eller Policer, udstedte af Assurandører, anerkendte som solide, paa sædvanlige Betingelser; Policien behøver saaledes kun at dække Beskadigelse forårsaget ved Stranding, Ild, Is eller Kollision. — Hvad enten Assuranceen er tegnet af Sælger eller Køber, skal Policen dække almindelig Lægter-Risiko til og fra Borde. Ethvert Beløb, hvormed den af Sælgeren leverede Police overstiger Fakturabeløbet plus 5 pCt., tilfalder Sælgeren i Tilfælde af totalt Forlis.

#### § 5. *Rembours og Destination.*

Rembours og/eller Destination opgives senest ved Indladningens Tilendebrielse, forudsat at Sælgeren behørig Tid forinden har affordret Køberen Opgave herover. Er Destination og/eller Rembours krævet og opgivet, kan et en Gang varslet Skib ikke trækkes tilbage, medmindre der foreligger force majeure.

#### § 6. *Vægtgaranti.*

a) Sælgeren garanterer den fakturerede metriske Vægt udleveret paa Bestemmelsesstedet. Snarest muligt efter endt Udlosning og eventuel Regulering opgøres eventuel Over- eller Undervægt efter Attest fra autoriseret Vejer eller fra et offentligt Pakhusselskab, hvis Losningen besorges af et saadant. I Tilfælde af Søsade, hvorved det indladede Kvantum kan antages at være forøget, bortfalder Godtgørelse for Overvægt, ligesom Godtgørelse for Undervægt bortfalder, naar Kvantummet i Tilfælde af Havari maa antages at være formindsket. Oppumpning af Varer betragtes dog ikke som Bevis for Søsade i nævnte Forstand.

b) Naar to eller flere Købere modtager Varer, der er indladede under eet eller uden tilstrækkelig Adskillelse, og som udlosses i en eller flere Havne, deltager enhver af dem i den eventuelt beskadigede Del og i Opfejdning etc. saavel som i Over- eller Undervægt i Forhold til sit Partis Størrelse.

#### § 7. *Afskibnings-Forhindringer.*

a) Hvis Strike paa Afladepladsen forhindrer rettidig Afskibning, forlænges Afladefristen med 3 Uger.

Dersom Afskibning paa Grund af Strike ikke har fundet Sted inden Udlobet af den forlængede Tidsfrist, har Køberen Valget imellem at ophæve Handelen uden Godtgørelse, eller fordrer prompt Afskibning efter Strikens Ophor.

Sælgeren skal uden Ophold underrette Køberen om den indtraadte Strike, og om han præsterer Levering indenfor den forlængede Tidsfrist.

Kan Levering ikke ske, har Køberen indenfor en Frist af 48 Timer at erklære, om han ophæver Handelen eller fordrer senere Levering.

b) Dersom Krig, Blokade eller Udførselsforbud forhindrer Afskibningen, er denne Kontrakt eller enhver uopfyldt Del af samme annulleret.

c) Hvis Destinationshavnen viser sig at være utilgængelig paa Grund af Is, er Kaptainen berettiget til at løse Ladningen i den i samme Land nærmeste tilgængelige Havn med Jernbaneforbindelse.

Unloading of sailing vessels takes place according to the Danish Maritime Law.

To unload a parcel of goods forming only part of a cargo, the purchaser, according to the size of his parcel, is entitled to a period proportionate to that of the other consignees of goods as provided in the above mentioned rules.

If it is proved that a strike or a lock-out prevents the unloading and bringing of the goods safely on land within the stipulated time, the purchaser is under no obligation to pay the augmented expenses caused by such delay.

#### § 4. *Insurance.*

If a sale has been concluded on the terms "including freight", the seller must see that the purchaser is informed of the name of the vessel so as to enable him to effect an insurance of the merchandise before the loading is begun. In the case of a sale concluded according to the clause "including freight and insurance", the seller must give a policy or policies for the invoice amount and an additional 5 per cent., issued by insurers recognised as solvent, on the ordinary conditions; the policy consequently need only cover damage caused by shipwreck, fire, ice or collision. — Whether the insurance has been effected by the seller or the purchaser, the policy shall cover the ordinary risk connected with lighterage from and to the ship. Any amount by which the policy taken out by the seller exceeds the invoice amount plus 5 per cent., in case of total shipwreck enures to the seller.

#### § 5. *Re-imbursement and place of destination.*

Re-imbursement and/or place of destination are indicated at the latest on the completion of the loading, provided the seller in due time beforehand has requested the purchaser to give him information to this effect. When the place of destination and/or re-imbursement has been requested and indicated, a vessel once hired cannot be cancelled except in case of *force majeure*.

#### § 6. *Guarantee of weight.*

a) The seller guarantees that the metrical weight indicated in the invoice shall be delivered at the place of destination. As soon as possible on the completion of the unloading and eventual adjustment, the increase or decrease of weight is calculated according to a certificate issued by an authorised weigher or by a public storehouse company, if the unloading is effected by such a company. In case of an accident at sea, by which the quantity of goods shipped may be supposed to have augmented, there is no compensation for the increase of weight, and there is no compensation for the decrease of weight if the quantity in the case of average must be supposed to have shrunk. The pumping of water from goods is, however, not considered as proof of an accident at sea in the sense above mentioned.

b) When two or more purchasers receive goods which are loaded together, or which are not sufficiently separated, and which are unloaded in one or more ports, each of them has his share in the eventually damaged part and in the cleaning etc., as well in the increase or decrease of weight proportionate to his quantity of goods.

#### § 7. *Obstacles to loading.*

a) If at the place of loading a strike prevents shipment at the stipulated time, the period granted for loading is prolonged by three weeks.

If on account of a strike the loading has not taken place before the expiration of the prolonged period, the purchaser can either cancel the transaction without compensation, or demand prompt shipment after the cessation of the strike.

The seller must without delay inform the purchaser of the occurrence of the strike, and whether he intends to effect delivery within the prolonged period.

If delivery cannot take place, the purchaser, within a period of 48 hours, must declare whether he cancels the transaction or demands that delivery shall be effected later on.

b) If war, blockade or export prohibition prevents shipment, the contract, or any part of it which has not been carried out, becomes void.

c) If the port of destination proves to be inaccessible owing to ice, the ship-master is entitled to unload the cargo in the nearest accessible port of the same country which has a railway station.

### § 8. *Betalingsstandsning etc.*

Kommer en af de kontraherende Parter efter Købets Afslutning under Konkurs, eller aabnes der Forhandlinger om Tvangsakkord for ham, eller har han standset sine Betalinger, skal Medkontrahenten, straks efter at han er bleven bekendt hermed, opfordre den anden Part til at stille betryggende Sikkerhed og har, saafremt en saadan Sikkerhed ikke straks stilles, Valget mellem enten at annullere Kontrakten eller lade Værdien af Varer fastsætte ved Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg, eller foretage behørigt Dækningskøb eller Dækningssalg, og i saa Fald at forlange den opstaaede Prisforskel godtgjort.

### § 9. *Twistigheder.*

I. Naar Køberen uden Kontrol lader Sælgeren besørge Afskibningen, skal han være uberettiget til senere at refusere Varerne paa Grund af Kvalitetsmangler, men Sælgeren er forpligtet til at yde Køberen Godtgørelse for de Mangler i Kvalitet, som af Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg for Kornhandelen skønnes at have været til Stede ved Indladningen.

Formenes Varerne ved Ankomsten eller under Losningen at være ukontraktmæssige, og agter Køberen derfor at fordrø Erstatning, skal han snarest muligt give Sælgeren Underretning derom.

Bor Sælgeren paa en anden Plads end Køberen, skal denne Underretning gives telegrafisk. Har Sælgeren en anmeldt Repræsentant — derunder Kontrollør — til Stede, er det tilstrækkeligt, at Køberen giver Underretningen til Repræsentanten.

Hvis Sælgeren ikke er repræsenteret, eller Repræsentanten nægter at udtage Prover, eller Køberen og Repræsentanten ikke kan blive enige om Provetagningen, foretages denne af tvende uvildige og kyndige Mænd, udmeldte dertil paa Køberens Foranledning, i Kjøbenhavn af Bedømmelses-Udvalget og andetsteds af Retten eller Øvrigheden.

Køberen og Sælgeren eller deres Repræsentanter udtager i Forening Prover, der behørig forsegles og indsendes til eventuel Bedømmelse. Kvalitetsvægten fastsættes mindst en Gang daglig ved Vejning i Land.

De udtagne Prover med behørig Attest samt Køberens Fremstilling af de formentlige Mangler bliver at indsende til Børskontoret i Kjøbenhavn med Børgering om Bedømmelse af ovennævnte Udvalg. Hvis Disputen angaar Varernes Sundhed, skal Proverne indsendes uopholdelig.

Ønsker Modtageren i Spørgsmaal, der ikke angaar Varernes Sundhed, at gaa til Bedømmelse, skal han senest 14 Dage efter endt Udlosning underrette sin Sælger herom. Er denne ikke første Sælger, skal han uopholdelig lade saadan Underretning gaa videre. Sagen skal derefter snarest indsendes til Udvalget.

II. Naar Køberen har ladet Varerne kontrollere ved Indladningen uden at rejse Indsigelse imod deres Kontraktmæssighed, er han uberettiget til senere at reklamere angaaende Kvaliteten.

Opstaar der under Indladningen Disput imellem Parterne om Varernes Kontraktmæssighed, afgøres Spørgsmaalet som følger:

a) Ved Afskibning fra indenrigsk Sted fastsættes Kvalitetsvægten og/eller udtages der under Indladningen, overensstemmende med de i § 9 I foreskrevne Regler, Prover af Varerne, hvilke Prover paa samme Maade indsendes til Bedømmelses-Udvalget.

Hvis Udvalget kender, at Varerne har Kvalitetsmangler derunder Kvalitetsundervægt, der tilsammen ikke overstiger 3 pCt. af Fakturaprisen, er Køberen pligtig til at modtage Varerne imod at erholde den Godtgørelse, som Udvalget fastsætter.

Erklærer Udvalget, at Varerne er usunde, eller at de foranømtalte Kvalitetsmangler overstiger 3 pCt. af Fakturaprisen, er Køberen berettiget til at nægte Modtagelse og gøre sin Ret ifølge Slutsedlen gældende.

b) Ved Afskibning fra udenrigsk Sted skal der paa Sælgerens Foranledning, ved Indladningen tages lovligt Skøn over Varerne, og den af Skønnet afgivne skriftlige Erklæring skal være endelig og verbindende for Parterne.

§ 8. *Suspension of payments, etc.*

If after the conclusion of the sale one of the contracting parties becomes bankrupt, or if negotiations with a view to obtaining a composition for him are commenced, or if he has suspended his payments, the other contracting party, immediately on being informed of such occurrence, shall ask the other party to give sufficient security, and may, if such security is not immediately given, either cancel the contract, or have the value of the goods estimated by the Valuation and Arbitration Committee of Copenhagen, or undertake a sufficient covering purchase or covering sale, and in such case claim reimbursement of the difference in the price thereby resulting.

§ 9. *Disputes.*

I. If the purchaser allows the seller to effect shipment without control, he is not entitled subsequently to reject the goods owing to defects of quality, but the seller must compensate the purchaser for such defects of quality as the Valuation and Arbitration Committee for the Corn Trade of Copenhagen estimates as having been existent at the time of loading.

If on the arrival or during the unloading the goods are considered not to be in conformity with the contract, and if the purchaser intends to demand compensation on account of such deficiency, he shall, as soon as possible, inform the seller of his intention.

If the seller has his domicile at another place than that of the purchaser, such information shall be sent by telegraph. If the seller has an authorised representative — including controller — on the spot, it is sufficient that the purchaser should inform the representative.

If the seller has no representative, or the latter refuses to select samples, or the purchaser and the representative cannot agree with regard to the selection of samples, this is carried out by two impartial and competent men, chosen for this purpose at the request of the purchaser, in Copenhagen by the Valuation Committee, and elsewhere by the Tribunal or the Authority.

The purchaser and the seller, or their representatives, together select samples, which are duly sealed and sent for eventual estimation. The weight according to quality is estimated at least once every day by means of weighing on land.

The selected samples, accompanied by a regular certificate and the purchaser's description of the alleged defects, shall be sent to the Exchange Office in Copenhagen with a request for estimation by the above-mentioned Committee. If the dispute concerns the wholesomeness of the goods, the samples shall be sent forthwith.

If the receiver requests estimation with regard to questions not affecting the wholesomeness of the goods, he shall, at the latest within a fortnight of the completion of the unloading, inform his seller of his request. If this seller is not the first seller, he shall forthwith forward such information to the preceding seller. The matter shall thereupon, as soon as possible, be sent to the Committee.

II. When the purchaser has checked the goods at the time of loading without making any objection with regard to their not being as stipulated by the contract, he has no right subsequently to present any protest bearing on their quality.

If, during the loading, a dispute arises between the parties as to whether the goods are as stipulated by the contract, the question is settled in the following manner:

a) In case of shipment from a place in Denmark, the weight according to quality is fixed, and/or samples of the goods are selected during the loading according to the rules of § 9 I, which samples in the same manner are sent to the Valuation Committee.

If the Committee comes to the conclusion that the goods suffer from defects of quality, including insufficient weight according to quality, which together do not exceed 3 per cent. of the invoice amount, the purchaser is bound to accept the goods against compensation to be fixed by the Committee.

If the Committee declares that the goods are unwholesome, or that the above-named defects of quality exceed 3 per cent. of the invoice amount, the purchaser is entitled to reject the goods, and to take advantage of his right according to the broker's note.

b) In the case of shipment from a place abroad, there shall be made at the time of loading, and at the seller's request, an estimate of the goods, and the written award of the experts shall be final and binding on the parties.

Erklærer Skønnet Varerne for at have Kvalitetsmangler, derunder Kvalitetsundervægt, der ikke overstiger 3 pCt. af Fakturaprisen, er Køberen pligtig til at modtage Varerne imod at erholde den Godtgørelse, som Skønnet fastsætter.

Erklærer Skønnet, at Varerne er usunde eller at de foranømtalte Kvalitetsmangler overstiger 3 pCt. af Fakturaprisen, er Køberen berettiget til at nægte Modtagelse og gøre sin Ret ifølge Slutsedlen gældende.

III. Berettiger Slutsedlen til flere Leveringer, behandles hver Levering som en særskilt Kontrakt.

IV. Enhver Tvistighed angaaende denne Handel og Slutseddel, det være sig angaaende Kvaliteten, Parternes Fremgangsmaade eller iøvrigt, skal uden Undtagelse forelægges og afgøres af Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg for Kornhandelen.

Udvalgets Kendelse skal være endelig og verbindende for Parterne, saaledes at den ikke af nogensomhelst Grund — det være sig Realitets- eller Formalitetsgrunde — skal kunne underkendes eller tilsidesættes af Domstolene.

Undlader nogen at opfylde Udvalgets Kendelse, er Udvalget berettiget til at foranledige dette offentlig bekendtgjort ved Opslag paa Børsen eller paa anden Maade. Udvalget kan da, saalænge Kendelsen ikke er opfyldt, ikke behandle nogen Sag, hvori Vedkommende er Part, medmindre Sagen angaar en Forretning, afsluttet forinden Bekendtgørelsen har fundet Sted.

Skulde Udvalget skønne, at Tvisten ikke egner sig til Udvalgets Afgørelse, afgives Kendelse herom, hvorefter Parterne kunne gaa Retsvejen.

#### § 10. *Handler om Majs.*

Samtlige denne Slutseddels Forskrifter kommer ogsaa til Anvendelse ved Handler om Majs, for § 9 II's Vedkommende dog med den Modifikation, at Køberen, naar Manglerne, uden Hensyn til hvorfra de stammer, ikke overstiger 2 pCt. af Fakturaprisen, er pligtig til at modtage Varerne mod at erholde den Godtgørelse, som henholdsvis Udvalget eller Skønnet fastsætter, medens han, naar Manglerne overstiger 2 pCt. af Fakturaprisen, er berettiget til at nægte Modtagelse og gøre sin Ret ifølge Slutsedlen gældende.

**Slutseddel for Handler i Foderstoffer „in loco“ eller „leveret“ (vedtagen 1909).**

#### § 1. *Kvantum og Vejning.*

[a, og b, Som Slutsedlen for Korn „in loco“ eller „leveret“ § Ia, og b].

c) Ved Levering af Klid, der er solgt i Sække af ensartet Nettovægt kan Køberen fordrø Bruttovægten konstateret ved autoriseret Vejer eller offentligt Pakhusselskab. Taraen bestemmes ved, at hver af Parterne udtager lige mange Sække, dog højst hver 5 pCt. af Partiet. Samtlige udtagne Sækkes Tara undersøges, og den derved fremkomne Gennemsnitstara gælder for hele Partiet. Er Vejning forlangt, bliver Partiet i ethvert Tilfælde at betale efter den saaledes udfundne Nettovægt. Viser der sig at være en Undervægt af mindst  $\frac{1}{8}$  kg pr. Sæk gennemsnitlig, betaler Sælgeren samtlige ved Vejningen og Tareringen forårsagede Omkostninger, i modsat Fald betales disse af Køberen.

d) I alle andre Tilfælde, hvor autoriseret Vejer benyttes, skal den takstmæssige Betaling for Vejningen erlægges af Sælgeren.

#### § 2. *Kvalitet.*

a) Ved Bedømmelsen af en Vare efter Salgsprøve bør tages Hensyn til den Forandring, som Prøven kan være undergaaet ved at henligge eller af andre naturlige Aarsager.

b) Ved Salg af løse Oliekager er Køberen ikke forpligtet til at modtage af Smaastykker, hvorved forstaas Stykker mindre end  $\frac{1}{4}$  Kage, ud over 10 pCt. af faste og 25 pCt. af skøre Kager.

#### § 3. *Vejning.*

[Som Slutsedlen for Korn „in loco“ eller „leveret“ § 3.]



If the experts find that the goods suffer from defects of quality, including insufficient weight according to quality, which do not exceed 3 per cent. of the invoice amount, the purchaser is bound to accept the goods against compensation to be fixed by the experts.

If the experts find that the goods are unwholesome, or that the above-named defects of quality exceed 3 per cent. of the invoice amount, the purchaser is entitled to reject the goods and to take advantage of his right according to the broker's note.

III. If the broker's note authorises several deliveries, each delivery is treated as a separate contract.

IV. Any dispute concerning this trade and this broker's note, whether it be as to the quality, the conduct of the parties or other matters, shall, without exception, be submitted to and decided by the Valuation and Arbitration Committee for the Corn Trade of Copenhagen.

The finding of the Committee shall be final and binding on the parties, so that for no reason whatever — whether it be one bearing on the merits of the case or on its formalities — can such finding be quashed or disregarded by the Tribunals.

If any person neglects to comply with the finding of the Committee, the Committee is authorised to publish such neglect by means of a placard at the Exchange, or in some other manner. The Committee then, so long as its finding has not been complied with, cannot deal with any dispute in which the person in question is one of the parties, unless the dispute concerns a transaction concluded before the publication was made.

If the Committee finds that the dispute is not suitable for its decision, the Committee decides accordingly, whereupon the parties can go before the tribunals.

#### § 10. *Dealings in maize.*

All the regulations of this broker's note also apply to dealings in maize, so far as § 9 II is concerned, with the modification, however, that the purchaser, when the defects, without having regard to their origin, do not exceed 2 per cent. of the invoice amount, is bound to accept the goods against compensation, which is fixed by the Committee or the experts respectively, whereas, when the defects exceed 2 per cent. of the invoice amount, he is entitled to reject the goods, and to take advantage of his right according to the broker's note.

**Broker's note for dealings in feeding stuffs "in loco" or "delivered" (authorised 1909).**

#### § 1. *Quantity and weighing.*

[a and b, the same as the broker's note for corn "in loco" or "delivered" § 1a, and b.]

c) In the case of delivery of bran which is sold in sacks of a uniform net weight, the purchaser can demand that the gross weight shall be verified by an authorised weigher or by a public storehouse company. The tare is fixed on the basis of a selection by each of the parties of an equal number of sacks, not more, however, than 5 per cent. each of the whole quantity. The tare of all the selected sacks is examined, and the average tare resulting from such examination applies to the entire quantity. If weighing has been requested, the whole quantity is in any case to be paid for according to the net weight thus estimated. If it is proved that there is an average deficiency of weight amounting to at least  $\frac{1}{8}$  kg. per sack, the seller has to pay all the expenses incurred by the weighing and the fixing of the tare; in the contrary case, these are paid by the purchaser.

d) In all other cases where authorised weighing is made use of, the tariff charge for weighing shall be paid by the seller.

#### § 2. *Quality.*

a) When merchandise is estimated according to a sale sample, the change must be taken into account which the sample may have undergone through storage or owing to other natural causes.

b) In the case of sales of loose oil cakes it is incumbent on the purchaser to accept small pieces, by which are understood pieces less than  $\frac{1}{4}$  cake, up to 10 per cent. when compact cakes, and up to 25 per cent. when crisp ones, are concerned.

#### § 3. *Weighing.*

[The same as the broker's note for corn "in loco" or "delivered" § 3.]

§ 4. *Modtagelsen.*

[Som Slutsedlen for Korn „in loco“ eller „leveret“ § 4, alene med Udeladelse af c) sidste Pk. og af Ordene: „og/eller Kvalitetsvægt“ samt „eller Silo“ i d).]

§ 5. *Sække og Sækkeleje.*

a) Ved Salg af Klid i Sække betaler Køberen disse samtidig med Varerne med højst 50 Øre pr. Stk. Køberen har Valget mellem helt eller delvis at beholde Sækkene eller at tilbagelevere dem til Sælgeren i forsvarlig ubeskadiget Stand mod Tilbagebetaling af den for dem beregnede Pris. — For Sække, der tilbageleveres inden 3 Uger efter Modtagelsen, beregnes ingen Sækkeleje, men derefter betaler Køberen i Leje 5 Øre pr. Sæk for hver paabegyndte 14 Dage, regnet fra Tre-Ugers-Dagen efter Varernes Levering. Med Syv-Ugers-Dagen efter Leveringen ophører dog Køberens Ret til Tilbagelevering.

b) Ved Salg af Klid fra københavnske Møller gælder disses sædvanlige Sækkebetingelser.

§ 6. *Forhindring af Levering.*

a) [Som ovennævnte Slutseddels § 6a, 1ste St.]

b) Dersom Levering af en navngiven Fabriks Produktion (eventuelt et indregistreret Varemærke) umuliggøres ved Fabrikens Brand eller anden fuldstændig Ødelæggelse, er Handelen gensidig ophævet, hvorom Sælgeren er forpligtet til at give Køberen fornøden Meddelelse.

c) Havari eller Forlis af Varer med et i Slutsedlen opgivet Skib ophæver Handelen for den beskadigede eller ikke fremkomne Del af Partiet, ved sammenladede Varer pro rata.

§ 7. *Om Betalingsstandsning etc.*

[Som ovennævnte Slutseddels § 7.]

§ 8. *Twistigheder.*

I. Formenens Varen at være ukontraktmæssig, og agter Køberen i den Anledning at gøre sin Ret gældende, skal han snarest muligt underrette Sælgeren derom.

Bor Sælgeren paa en anden Plads end Køberen, skal denne Underretning gives telegrafisk. Har Sælgeren en anmeldt Repræsentant, derunder Kontroller, til Stede, er det tilstrækkeligt, at Køberen giver Underretning til Repræsentanten.

Hvis Sælgeren ikke er repræsenteret, eller Repræsentanten nægter at udtage Prover, eller Køberen og Repræsentanten ikke kan blive enige om Provetagningen, foretages denne af tvende uvildige og kyndige Mænd, udmeldte dertil i København af Københavns Bedømmelses- og Voldgifts-Udvalg for Foderstofhandelen og andetsteds af Retten eller Øvrigheden. Køberen og Sælgeren eller deres Repræsentanter udtager og forsegler i Forening Prover, der ledsagede af behørig Attest indsendes til Børskontoret i København med en Fremstilling af de fornødtige Mangler og Begæring om Bedømmelse af ovennævnte Udvalg.

Ved Kvalitetsmangler, der tilsammen ikke ansættes til over 3 pCt., er Køberen forpligtet til at modtage Partiet imod at erholde den tilkendte Godtgørelse. Ansættes Kvalitetsmanglerne til mere end 3 pCt., er Køberen berettiget til at nægte Modtagelse og gøre sin Ret ifølge Slutsedlen gældende, dog bliver Sælgerens Ret i Henhold til § 4 f ham forbeholdt.

[II og III som ovennævnte Slutseddels § 8, kun at det selvfølgelig er Udvalget for Foderstofhandlen, hvortil der henvises.]

**Slutseddel for Handler i Foderstoffer „inklusive Fragt“ eller „inklusive Fragt og Assurance“ (elf) (vedtagen 1909).**

§ 1. *Kvantum.*

[Som den tilsvarende Slutseddel for Korn § 1.]

§ 4. *Reception of goods.*

[The same as the broker's note for corn "in loco" or "delivered" § 4, only with the exception of c), last sentence, and of the words: "and or the weight of quality", and "or silo" in d).]

§ 5. *Sacks and the hire of sacks.*

a) When bran is sold in sacks, the purchaser pays for these at the same time as for the goods, at 50 öre per sack at most. The purchaser may either keep all the sacks, or some of them, or return them to the seller in a good and undamaged state against recovery of the amount paid for them. — For sacks, returned within three weeks of receiving the goods, no hire is paid, but after that the purchaser pays a hire of 5 öre per sack for each fortnight which is commenced, calculated from the expiration of the first three weeks after the delivery of the goods. The purchaser's right to return the sacks ceases, however, at the expiration of the first seven weeks after the delivery.

b) When bran is sold from mills situated in Copenhagen, their usual conditions for the hire of sacks are applicable.

§ 6. *Obstacles to delivery.*

a) [The same as the 1st paragraph of § 6a of the above mentioned broker's note.]

b) When the delivery of the products of a definite factory (eventually intended to have a registered trade mark) is made impossible owing to the destruction of the factory by fire or to some other complete destruction, the transaction is reciprocally cancelled; it is incumbent on the seller to duly inform the purchaser of such occurrence.

c) Average or loss of goods shipped by a vessel indicated in the broker's note, cancels the transaction with regard to that quantity of the goods which has been damaged or which has not arrived, and in the case of goods loaded jointly, pro rata.

§ 7. *Suspension of payments etc.*

[The same as the above mentioned broker's note § 7.]

§ 8. *Disputes.*

I. If the merchandise is estimated not to be according to the stipulations of the contract, and if the purchaser intends to take advantage of his right, he must, as soon as possible, inform the seller of his intention.

If the seller has his domicile at another place than that of the purchaser, such information must be sent by telegraph. If the seller has an authorised representative, including controller, on the spot, it is sufficient for the purchaser to inform such representative.

If the seller has no representative where the purchaser lives, or the representative refuses to select samples, or the purchaser and the representative cannot agree with regard to the selection of samples, such selection is made by two impartial and competent men, nominated for this purpose in Copenhagen by the Valuation and Arbitration Committee for feeding stuffs operating there, and elsewhere by the local tribunal or authority. The purchaser and the seller, or their representatives, select and seal together samples, which, accompanied by a regular certificate, are sent to the Exchange Office in Copenhagen with a description of the alleged defects and a request for a valuation by the said Committee.

When defects of quality are concerned which together are not estimated at more than 3 per cent, the purchaser must accept the goods and will obtain the compensation awarded him. If the defects of quality are estimated at more than 3 per cent, the purchaser is entitled to reject the goods, and to take advantage of his right according to the broker's note; the seller however retains his right according to § 4f.

[II and III, the same as § 8 of the above-mentioned broker's note, only with the exception of course that the Committee for the trade in feeding stuffs must be referred to.]

**Broker's note for dealings in feeding stuffs "including freight" or "including freight and insurance" (c. i. f.) (authorised 1909).**

§ 1. *Quantity.*

[The same as § 1 of the corresponding broker's note for dealings in corn.]

§ 2. *Kvalitet.*

a) Ved Bedømmelse af en Vare efter Salgsprøve bør tages Hensyn til den Forandring, som Prøven kan være undergaaet ved at henligge eller af andre naturlige Aarsager.

b) Ved Salg af løse Oliekager skal Afladningen i det væsentlige ske i hele Kager, herfra undtages dog skøre Kagesorter, for hvilke Brudgarantien retter sig efter Coutume paa Afladestedet.

§ 3. *Skib, Afskibning og Losning.*

[Som ovennævnte Slutseddels § 3.]

§ 4. *Assurance.*

[Som ovennævnte Slutseddels § 4.]

§ 5. *Rembours og Destination.*

[Som ovennævnte Slutseddels § 5.]

§ 6. *Vægtgaranti.*

[Som ovennævnte Slutseddels § 6.]

§ 7. *Afskibnings-Forhindringer.*

a) Dersom rettidig Afskibning af en navngiven Fabriks Produktion (eventuelt et indregistreret Varemærke) umuliggøres ved Beskadigelse af Maskineri, der bevislig nødvendiggør en midlertidig Standsning af Fabrikationen, ved Strike blandt Arbejderne eller lignende, skal Sælgeren uophødelig underrette Køberen derom, og denne har da Valget imellem at ophæve Handelen uden Godtgørelse eller at fordre Levering, saa snart Forholdene tillader det, men skal erklære sig herom inden for en Frist af 48 Timer. — Odelægges Fabrikken fuldstændig ved Brand eller anden Sælgeren utilregnelig ulykkelig Begivenhed, og Afskibningen derved umuliggøres, er Handelen gensidig ophævet, hvorom Sælgeren er forpligtet til at give Køberen fornøden Meddelelse.

b) Hvis Strike paa Afladepladsen forhindrer rettidig Afskibning, forlænges Afladefristen med 3 Uger. — Dersom Afskibning paa Grund af Strike ikke har fundet Sted inden Udlobet af den forlængede Tidsfrist, har Køberen Valget imellem at ophæve Handelen uden Godtgørelse eller fordre prompt Afskibning efter Strikens Ophør. — Sælgeren skal uden Ophold underrette Køberen om den indtraadte Strike, og om han præsterer Levering indenfor den forlængede Tidsfrist. — Kan Levering ikke ske, har Køberen indenfor en Frist af 48 Timer at erklære, om han ophæver Handelen eller fordrer senere Levering.

c) Dersom Krig, Blokade eller Udforselsforbud forhindrer Afskibningen, er denne Kontrakt eller enhver uopfyldt Del af samme annulleret.

d) Hvis Destinationshavnen viser sig at være utilgængelig paa Grund af Is, er Kaptainen berettiget til at losse Ladningen i den i samme Land nærmest tilgængelige Havn med Jærnbancforbindelse.

§ 8. *Betalingsstandsning etc.*

[Som ovennævnte Slutseddels § 8.]

§ 9. *Tristigheder*

1. [Som § 9 I i den tilsvarende Slutseddels af 1909 for Korn, kun at det selvfølgelig er Udvalget for Foderstofhandlen, der henvises til, hvorhos I. 5te St. sidste Pkt.: »Kvalitetsvægten fastsættes mindst en Gang daglig ved Vejning i Lande er udeladt.]

II. Naar Køberen har ladet Varerne kontrollere ved Indladningen uden at rejse Indsigelse imod deres Kontraktmæssighed, er han uberettiget til senere at reklamere angaaende Kvaliteten.

Opstaar der under Indladningen Disput imellem Parterne om Varernes Kontraktmæssighed, afgøres Spørgsmaalet som følger:

a) Ved Afskibning fra indenrigsk Sted udtages der under Indladningen, overensstemmende med de i § 9 foreskrevne Regler, Prover af Varerne, hvilke Prover paa

## § 2. *Quality.*

a) When merchandise is estimated according to a sale sample, the change must be taken into account which the sample may have undergone through warehousing or owing to other natural causes.

b) When loose oil cakes are sold the loading must in the main be effected in unbroken cakes; exception from this rule is however made with regard to crisp cakes, the guarantee as to the fragility of which is regulated according to the custom obtaining at the place of loading.

## § 3. *Vessel, shipment and unloading.*

[The same as § 3 of the above mentioned broker's note.]

## § 4. *Insurance.*

[The same as § 4 of the above mentioned broker's note.]

## § 5. *Re-imbusement and place of destination.*

[The same as § 5 of the above mentioned broker's note.]

## § 6. *The guarantee of weight.*

[The same as § 6 of the above mentioned broker's note.]

## § 7. *Obstacles to shipment.*

a) If shipment in due time of the products of a definite factory (eventually intended to have a registered trade mark) is made impossible owing to deterioration of machinery which, it is proved, necessitates a temporary suspension of the factory work, owing to a strike amongst the factory hands, or some other similar occurrence, the seller must forthwith inform the purchaser of such occurrence, and the latter can then either cancel the transaction without obtaining compensation, or demand delivery as soon as circumstances allow it, but he must make a declaration to this effect within a period of forty-eight hours. — If the factory is entirely destroyed by fire, or owing to some other accidental occurrence for which the seller is not to blame, and if shipment is thereby rendered impossible, the transaction is reciprocally cancelled, of which occurrence the seller has to duly inform the purchaser.

b) If at the place of loading a strike prevents shipment in due time, the period granted for loading is prolonged by three weeks. — If, owing to a strike, shipment has not taken place before the expiration of the prolonged period, the purchaser may either cancel the transaction without compensation or demand prompt delivery on the cessation of the strike. — The seller must without delay inform the purchaser of the advent of the strike, and whether he is willing to effect delivery within the prolonged period. — If delivery cannot take place, the purchaser, within a period of forty-eight hours, has to declare whether he cancels the transaction or demands that delivery be effected later on.

c) If war, blockade or prohibition of export prevents shipment, the contract in question, or any part of it which has not been fulfilled, becomes void.

d) If the port of destination proves to be inaccessible owing to ice, the captain is entitled to unload the cargo at the nearest accessible port of the same country having a railway station.

## § 8. *Suspension of payments etc.*

[The same as § 8 of the above mentioned broker's note.]

## § 9. *Disputes.*

I. [The same as § 9 I of the corresponding broker's note of 1909 for corn, excepting of course that the Committee for the trade in feeding stuffs must be referred to, and the last sentence of the fifth paragraph of Art. I: "The weight according to quality is estimated at least once every day by means of weighing on land" is omitted.]

II. If the purchaser has controlled the goods during the loading without raising any objection that they are not as stipulated by the contract, he is not entitled subsequently to raise any objection with regard to their quality.

If during the loading a dispute arises between the parties with regard to whether the goods are as stipulated by the contract, the question is settled as follows:

a) In case of shipment from a place in Denmark, samples of the goods are selected during the loading according to the rules given in § 9, which samples are sent to the

samme Maade indsendes til Bedømmelses-Udvalget. — Hvis Udvalget kender, at Varerne har Kvalitetsmangler, der tilsammen ikke overstiger 3 pCt. af Fakturaprisen, er Køberen pligtig til at modtage Varerne imod at erholde den Godtgørelse, som Udvalget fastsætter. — Erklærer Udvalget, at Varerne er usunde eller har Kvalitetsmangler, der overstiger 3 pCt. af Fakturaprisen, er Køberen berettiget til at nægte Modtagelse og gøre sin Ret ifølge Slutsedlen gældende.

b) Ved Afskibning fra udenrigsk Sted skal der paa Sælgerens Foranledning ved Indladningen tages lovligt Skøn over Varerne, og den af Skønnet afgivne skriftlige Erklæring skal være endelig og verbindende for Parterne. — Erklærer Skønnet Varerne for at have Kvalitetsmangler, der ikke overstiger 4 pCt. af Fakturaprisen, er Køberen pligtig til at modtage Varerne imod at erholde den Godtgørelse, som Skønnet fastsætter. — Erklærer Skønnet, at Varerne er usunde eller har Kvalitetsmangler, der overstiger 4 pCt. af Fakturaprisen, er Køberen berettiget til at nægte Modtagelse og gøre sin Ret ifølge Slutsedlen gældende.

[III og IV som ovennævnte Slutseddel § 9 III og IV.]

**Slutseddel for Handler i Kaffe in loco eller her leveret**  
(vedtagen 1908—1909).

§ 1. *Slutsedlen.*

Indsigelser imod Slutsedlen skulle fremsættes skriftlig og afleveres hos Medkontrahenten senest Kl. 12 paa den første Børsdag efter Forretningens Afslutning.

§ 2. *Kvalitet.*

Køb efter Prøve. Dersom Køberen vil sikre sig Partiets Overensstemmelse med Salgsprøven, paahviler det ham at stikke Prøve af dette senest den første Børsdag efter Købsdagen, eller, dersom Partiet først er disponibelt senere, da den første Børsdag efter, at det er meldt disponibelt, og skal den saaledes stukne Prøve være en Generalprøve af mindst 10 pCt. af Kolliantallet. Saafremt Køberen ikke inden næste Børsdag Kl. 12 efter denne Prøvetagning gør Indsigelse overfor Sælgeren mod den saaledes udtagne Generalprøves Overensstemmelse med den ham leverede Salgsprøve, er Partiet dermed i Henseende til Kvalitet beset og antaget. I modsat Fald har han at forholde sig efter § 6 I.

Undlader Køberen at foretage den her nævnte Stikning af Partiet, har han tabt sin Ret til paa et senere Tidspunkt at nægte Modtagelse, selv om det skulde vise sig ikke at være overensstemmende med Salgsprøven.

Godkendelse af den stukne Prøve af Partiet, saavel som Undladelse af overhovedet at stikke Prøve, præjudicerer ikke Køberens Ret til ved Modtagelse af Partiet at udskyde faktisk havareret og beskadiget Kaffe eller Kaffe, der i Mod sætning til Købsprøven helt eller delvis indeholder Triage Kaffe.

Dersom Partiet er beroende her, men ikke disponibelt ved Handelens Afslutning — altsaa enten under Pilning eller anden Behandling — skal Køberen senest den første Børsdag efter Salget afhente en større Prøve hos Sælgeren, og dersom denne Prøve er overensstemmende med Købsprøven, er Sælgeren pligtig at levere Partiet overensstemmende hermed.

Dersom Partiet er beliggende paa fremmed Plads eller svømmende hertil, er Sælgeren altid pligtig, hvis det er solgt efter Prøve, at levere overensstemmende med denne Prøve.

Køb efter Daaseprøve. Naar Køb sker efter Daaseprøve (Prøve, der er oversendt fra Afskibningsstedet), er den herværende Sælger ikke ansvarlig for Partiets Overensstemmelse med denne i Henseende til Kvalitet. Køberen er dog fri for at modtage havarerede eller dunstbelagte Varer.

§ 3. *Dispositionsmelding.*

a) Partier, der ikke ere disponible ved Handelens Afslutning, skulle skriftlig meldes disponible senest Kl. 12 paa en Børsdag. Dersom Dispositionsmelding sker senere end Kl. 12, regnes den fra den paafølgende Børsdag.

Valuation Committee in the same manner. — If the Committee comes to the conclusion that the goods have defects of quality which together do not exceed 3 per cent. of the invoice amount, the purchaser is bound to accept the goods against obtaining compensation as fixed by the Committee. — If the Committee declares that the goods are unwholesome or have defects of quality exceeding 3 per cent. of the invoice amount, the purchaser is entitled to reject the goods, and to take advantage of his right according to the broker's note.

b) If shipment is effected at a place abroad, the seller must see that the goods are duly estimated at the time of loading, and the written award of the experts will be final and binding on the parties. — If the appointed experts declare that the goods have defects of quality not exceeding 4 per cent. of the invoice amount, the purchaser is bound to accept the goods against obtaining compensation as fixed by the experts. — If the experts declare that the goods are unwholesome, or have defects of quality exceeding 4 per cent. of the invoice amount, the purchaser is entitled to reject the goods and to take advantage of the right granted him according to the broker's note.

[III and IV: the same as § 9 III and IV of the above mentioned broker's note.]

**Broker's note for dealings in coffee "in loco" or "delivered here".**

(authorised 1908—1909).

**§ 1. *The broker's note.***

Objections against the broker's note must be made in writing and presented to the other contracting party not later than twelve o'clock on the first Exchange day after the conclusion of the transaction.

**§ 2. *Quality.***

*Sale by sample.* If the purchaser wishes to assure himself that the goods correspond with the sale sample, it is incumbent on him to select samples of the goods at the latest on the first Exchange day after the day of the sale, or, if the goods are not available till later, on the first Exchange day after that on which they have been declared available; the selected sample must be a general sample of at least 10 per cent. of the number of packages. If the purchaser does not by twelve o'clock on the next Exchange day after this selection of samples has taken place, present his objections to the seller with regard to the non-conformity of the selected general sample with the sale sample which has been handed over to him, the goods so far as quality is concerned, are deemed to be examined and accepted. In the contrary case he must proceed according to § 6 I.

If the purchaser omits to undertake the said selection of samples, he forfeits his right to reject the goods at a subsequent date, even if they should prove to differ from the sale sample.

The approval of the selected samples of the goods, as well as the omission to select samples at all, does not prejudice the purchaser's right on receiving the goods to reject coffee which in fact is averaged and damaged, or coffee which, contrary to the sale sample, wholly or in part contains sorted coffee.

If the goods are deposited here, but are not available at the conclusion of the sale — consequently either during the decortication or other treatment — the purchaser, at the latest on the first Exchange day after the sale, must take a larger sample from the seller, and if such sample corresponds with the sale sample, the seller is bound to deliver the goods in accordance therewith.

If the goods are deposited at a foreign place or are on board a ship sailing for here, the seller, if they have been sold by sample, is bound to deliver according to such sample.

*Sale by means of samples in boxes.* When a sale is concluded by means of samples in boxes (samples sent from the place of shipment), the seller who is resident here does not guarantee that the bulk corresponds with such samples so far as quality is concerned. The purchaser is, however, not bound to accept averaged or moistened goods.

**§ 3. *Notice with regard to available goods.***

a) Goods not being available at the conclusion of the transaction, must be declared available in writing at the latest at twelve o'clock on an Exchange day. If such notice is given later than twelve o'clock, it is considered as given on the following day.

b) Svømmende Partier, der ere solgte paa Basis af de for en gros Kaffeforretning in loco gældende almindelige Regler, har Sælgeren Ret til paa ovenanførte Maade at melde disponible, saa snart de kunne erholdes udleverede fra Losseplads.

#### § 4. *Kvantum, Modtagelse, Vejning etc.*

Circa. Naar en Slutseddel paa disponibel loco Kaffe betegner det solgte Kolliantal som „circa“, har Sælgeren Ret til at levere 5 pCt. mere eller mindre end det nævnte Kvantum. Dog har Køberen Ret til med 1 Dags Varsel at forlange opgivet det nøjagtige Kolliantal. Er et ikke her lagret Parti solgt med Betegnelsen „circa“, skal det Kolliantal, som meldes disponibelt, leveres af Sælgeren, og har denne ingen Ret til at levere et mindre Kolliantal, end der leveres ham selv.

Modtagelse og Vejning a) skal ske paa det Sted, hvor Sælgeren anviser Partiet indenfor Kjøbenhavns og Kjøbenhavns Havns Omraade (Frihavnens Toldsted inklusive), men saaledes at Sælgeren leverer Partiet klareret paa Vægten. Dersom Partiet er beliggende i Frihavnen, har Køberen dog Ret til at forlange det udleveret fra det Pakhus, hvor det er beliggende, og skal Vejning da foretages autoriseret. b) Partier paa indtil 125 (inkl.) Sække, som ere beliggende i Frihavnen eller paa Toldboden, er Sælgeren kun pligtig at levere klareret samlet paa en Gang. Ønsker Køberen at modtage Partiet i flere Gange, har Sælgeren Ret til at give ham Udleveringsseddel, imod at Partiet vejes autoriseret, og paahviler Klareringspligten da Køberen. Paa samme Maade forholdes der med Partier paa over 125 Sække, hvis Køberen skulde forlange dem leverede med mindre Kvantum end 125 Sække ad Gangen. c) Naar Køberen ikke forinden Handelens Afslutning er bleven gjort bekendt med, at samme Mærke Kaffe henligger paa forskellige Steder til Modtagelse, skulle de Ekstraomkostninger, der derved opstaa for Køberen, godtgøres ham af Sælgeren. d) For Kaffe, der ikke er beliggende i Frihavnen eller paa Kjøbenhavns Toldbod, er Sælgeren berettiget til at forlange Modtagelse af indtil 25 Sække i højst 2 Gange, større Partier med mindst 25 Sække ad Gangen. e) Naar ingen bestemt Modtagelsestid er fastslaaet i Slutsedlen, skal Modtagelse finde Sted indenfor 8 Dage, Salgsdagen iberegnet. f) Ved Vejning af under 5 Sække beregnes fulde  $\frac{1}{4}$  kg, ved 5 Sække eller derover beregnes fulde  $\frac{1}{2}$  kg. Udslag gives ikke. Paa Frihavnens og Kjøbenhavns Toldbod er Køberen pligtig til at modtage Partiet vejjet med det Kolliantal, som Toldvæsenet fordrer. g) Naar den i Slutsedlen anførte Modtagelsestid er udløbet, uden at Køberen har modtaget Partiet, har Sælgeren Ret til at varsle ham i rekommanderet Brev til Modtagelse i Lobet af 2 Borsdage, og modtager Køberen derefter ikke Partiet, har Sælgeren Ret til, enten at annullere Forretningen eller til at forlange Skadeserstatning, hvilken vil være at fastsætte af Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg for Kaffehandelen.

Arbejdspege. h) Ved Modtagelse af Kaffe fra Pakhus i Staden eller Frihavnen betales af Køberen for hver 5 Sække eller mindre Kvantum 20 Ø., der inkluderer alle Omkostninger fra Vægt til paa Vogn. i) Ved Modtagelse paa Kjøbenhavns eller Frihavnens Toldsteder betale Sælger og Køber hver det halve af de paa Toldstederne beregnede Arbejdspege.

Sækkenes Vægt. k) Et Parti Brasil Kaffe skal, naar ingen anden Vægt er opgivet i Slutsedlen, i Gennemsnit veje Brutto ikke under  $57\frac{1}{2}$  og ikke over  $62\frac{1}{2}$  kg; et Parti Javakaffe ikke under  $57\frac{1}{2}$  og ikke over 65 kg; et Parti Portorico ikke under 80 og ikke over 90 kg; andre Kaffer ikke under  $57\frac{1}{2}$  og ikke over 100 kg Alt pr. Sæk i enkelt Emballage.

Emballage. l) Naar det ikke i Slutsedlen er anført, at Partiet er i dobbelt Emballage, har Sælgeren Ret til at levere det i enkelt Emballage.

Tara. m) For Brasilkaffe i enkelt original Emballage er Taraen  $\frac{1}{2}$  kg pr. Sæk, i dobbelt Emballage  $\frac{1}{2}$  kg for den indvendige Sæk, skadesløs Tara for Oversækken; for Privat Java og Gouvernements Java 1 kg pr. Sæk; for Domingo  $\frac{3}{4}$  kg



b) With regard to goods on board ships at sea, which are sold on the basis of the general rules applicable to wholesale dealings in coffee *in loco*, the seller has a right to declare them available in the above-mentioned manner, as soon as they are obtainable at the place of unloading.

#### § 4. *Quantity, reception, weighing, etc.*

*Circa.* When a broker's note for coffee available *in loco* designates the number of packages sold as "circa" (about), the seller has a right to deliver 5 per cent. more or less than the mentioned quantity. The purchaser, however, with a day's notice, has a right to be informed of the exact number of packages. If a quantity of goods which has not been stored here, has been sold with the word "circa", the number of packages which is declared available must be delivered by the seller, who has no right to deliver a smaller number of packages than that which has been delivered to him.

*Reception and weighing.* a) Must be effected at the place where the seller within the boundaries of Copenhagen and of the Free Harbour of Copenhagen (including the Custom House of the Free Harbour) points out the goods; the seller, however, delivers the goods cleared at the scales. If the goods remain within the Free Harbour, the purchaser has a right to demand that they be delivered from the warehouse where they are, and the weighing of them is then proceeded with in the authorised manner. — b) The seller is only bound to deliver cleared quantities of up to 125 sacks (inclusive) remaining within the Free Harbour or at the Custom House in one lot. If the purchaser desires to receive the goods in several lots, the seller is entitled to give him a delivery certificate, but the goods must be weighed in the authorised manner, and the clearing of them is incumbent on the purchaser. Quantities of over 125 sacks are dealt with in the same manner, if the purchaser should demand that they be delivered in smaller quantities than 125 sacks at a time. — c) If, before the conclusion of the transaction, the purchaser has not been informed that coffee having the same mark is lying at various places for reception, the additional cost thereby incurred by the purchaser shall be refunded to him by the seller. — d) When coffee is concerned which is not warehoused within the Free Harbour or at the Custom House of Copenhagen, the seller is entitled to demand that it shall be received in lots of not exceeding twenty-five sacks in at most two deliveries, and when larger quantities are concerned in lots of at least twenty-five sacks at a time. — e) When no definite time for reception is stipulated in the broker's note, the receipt shall be effected within eight days, the day of the sale included. — f) When quantities of less than five sacks are weighed, entire half pounds are calculated; when five sacks or more are weighed, entire pounds are calculated. The turning of the scales is not considered. At the Free Harbour and at the Custom House of Copenhagen the purchaser must receive the goods weighed in the number of packages which the Custom House Officials demand. — g) If the time for reception stipulated in the broker's note has expired without the purchaser having received the goods, the seller has a right to ask him by registered letter to receive them within two Exchange days, and if the purchaser on such notice being given does not receive the goods, the seller is entitled either to cancel the transaction or to claim compensation to be fixed by the Valuation and Arbitration Committee for the Coffee Trade operating in Copenhagen.

*Porterage.* h) On the reception of coffee from a warehouse in the city or the Free Harbour the purchaser has to pay for each of five sacks or a lesser quantity 20 öre, which includes all charges from the scales on to the waggon. — i) On the reception at the Custom Houses of Copenhagen or the Free Harbour the seller and purchaser each pay half the porterage stipulated at the Custom Houses.

*The weight of the sacks.* k) A parcel of Brazil coffee, when no other weight is indicated in the broker's note, shall in the average have a gross weight of not under  $57\frac{1}{2}$  and not over  $62\frac{1}{2}$  kilos; a parcel of Java coffee not under  $57\frac{1}{2}$  and not over 65 kilos; a parcel of Porto Rico not under 80 and not over 90 kilos; other kinds of coffee not under  $57\frac{1}{2}$  and not over 100 kilos: all per sack in simple packing.

*Packing.* l) When it is not indicated in the broker's note that the parcel in question is in double packing, the seller has a right to deliver it in simple packing.

*Tare.* m) For Brazil coffee in simple original packing the tare is  $\frac{1}{2}$  kilo per sack; in double packing  $\frac{1}{2}$  kilo for the inner sack, actual tare for the outer sack; for Private Java and Government Java 1 kilo per sack; for Santo Domingo  $\frac{3}{4}$  kilo per

pr. Sæk, dog saaledes, at Køberen har Ret til for samtlige her nævnte Sorters Vedkommende at forlange skadesløs Tara, naar denne maatte andrage mere end ovenfor nævnt. n) For Hollandsk Auktions Kaffe er Taraen 1 kg pr. Sæk. o) For andre Kaffesorter ligesom ogsaa for anden Pakning end Sække gives skadesløs Tara. p) Ved Undersøgelse af Tara paa privat Pakhus har Sælger og Køber Ret til hver at udpege lige mange Sække til Undersøgelse, dog i intet Tilfælde mere end 5 Sække hver. Omkostningerne ved Taraundersøgelsen bæres af Sælgeren. q) Dersom Partiet modtages paa Toldboden eller paa Frihavnens Toldbod, og Køberen ikke ved Modtagelsen vil godkende den af Toldvæsenet udfundne Tara, har han Ret til at forlange Taraundersøgelse paa sit eget Pakhus paa samme Maade som ovenfor nævnt, men maa da selv bære Omkostningerne.

Toldtransport. r) Toldtransport gives paa den udleverede Bruttovægt minus den ved Indklareringen af Toldvæsenet givne Tara.

Vareafgift. s) Vareafgift betales af Sælgeren.

Diskonto. t) Ved kontant Betaling godtgøres Køberen højeste Nationalbankdiskonto fra Betalingsdagen til 3 Maaneder fra Købs- eller Dispositionsdagen, beregnet paa den af Nationalbanken brugte Maade.

### § 5. Forhindring af Levering.

Ildsvaade og anden force majeure fritager Sælgeren for Levering af den beskadigede Del af Partiet, medmindre Køberen ønsker at modtage det i den Tilstand, hvori det maatte findes efter Beskadigelsen.

Hvis Ildsvaade eller anden force majeure beskadiger en Del af et Parti, som er solgt til en Gennemsnitspris, men som bestaar af flere Mærker af forskellig Kvalitet, skal Køberen modtage den ubeskadigede Del af Partiet til en forholdsvis Gennemsnitspris, der eventuelt bestemmes af Bedømmelsesudvalget.

Køberen kan ikke fordre Levering, naar Sælgeren af Assurandøren forhindres i at disponere over Partiet.

### § 6. Tvistigheder.

I. Finder Køberen, at den stukne Generalprøve (jfr. § 2) ikke er overensstemmende med Salgsprøven, skal han, hvis mindelig Ordning med Sælgeren ikke kan finde Sted, senest den første Børsdag efter Stikningen anmelde Sagen for Københavns Bedømmelses- og Voldgifts-Udvalg med Ledsagelse af Prøverne og samtidig skriftligt gore Sælgeren bekendt hermed. Hvis Udvalget giver ham Ret i, at den stukne Generalprøve er saa uoverensstemmende med Salgsprøven, at det berettiger Køberen til at kassere Partiet, har Køberen Ret til at annullere Forretningen. Sælgeren er i saa Fald hverken pligtig eller berettiget til at levere anden Kaffe, ligesom han er fritaget for enhver Skadeserstatning.

Naar Køberen ikke i rette Tid har modtaget et ham solgt Parti Kaffe, og Sælgeren derfor forlanger Skadeserstatning (jfr. § 4 g), skal saadan Erstatning ogsaa fastsættes af Udvalget.

II. Enhver Tvistighed angaaende denne Handel og Slutseddel, det være sig angaaende Kvaliteten, Parternes Fremgangsmaade eller iøvrigt, skal uden Undertagelse, naar det ikke ifølge Slutsedlen skal afgøres ved Arbitrage paa fremmed Plads, forelægges og afgøres af Københavns Bedømmelses- og Voldgifts-Udvalg for Kaffehandelen.

Udvalgets Kendelse skal være endelig og verbindende for Parterne, saaledes at den ikke af nogensomhelst Grund — det være sig Realitets- eller Formalitetsgrund — skal kunne underkendes eller tilsidesættes af Domstolene. Undlader nogen at opfylde Udvalgets Kendelse, er Udvalget berettiget til at foranledige dette offentligt bekendtgjort ved Opslag paa Børsen. Udvalget kan da, saalænge Kendelsen ikke er opfyldt, ikke behandle nogen Sag, hvori Vedkommende er Part, medmindre Sagen angaar en Forretning, afsluttet forinden Bekendtgørelsen har fundet Sted. — Skulde Udvalget skønne, at Tvisten ej egner sig til Udvalgets Afgørelse, afgives Kendelse herom, hvorefter Parterne kunne gaa Retsvejen.

sack, with the stipulation however that the purchaser has a right, in so far as all the kinds here mentioned are concerned, to claim actual tare when this amounts to more than the above figures. — n) For Dutch Auction coffee the tare is 1 kilo per sack. — o) For other kinds of coffee, as also for other packing than sacks, actual tare is granted. — p) For the verification of the tare at a private warehouse the seller and the purchaser have each a right to select an equal number of sacks for examination, in no case however more than five sacks each. The expenses of the verification of the tare are paid by the seller. — q) If the parcel in question is received at the Custom House of Copenhagen or at the Custom House of the Free Harbour, and the purchaser when receiving it is unwilling to approve of the tare found by the Custom House Administration, he has a right to demand that the tare shall be verified at his own warehouse in the same manner as above indicated, but in such case he must pay the expenses himself.

*Custom House transport.* r) Custom House transport is given on the delivered gross weight minus the tare indicated by the Custom House Administration at the clearing of the parcel which is concerned.

*Merchandise dues.* s) Merchandise dues are paid by the seller.

*Discount.* t) In case of payment in cash the purchaser is granted discount at the highest rate of the National Bank from the day of payment to three months from the day of the sale or the placing the goods at his disposal, and calculated in the manner which is customary at the National Bank.

#### § 5. *Obstacles to delivery.*

Destruction or damage by fire or other *force majeure* exempts the seller from delivering that part of the parcel sold which has been damaged, unless the purchaser desires to receive the same in the condition in which it is found after the damage.

If fire or other *force majeure* damages part of a parcel which is sold at an average price, but which consists of several marks of different quality, the purchaser shall receive the undamaged part of the parcel at a proportionate average price which will be eventually fixed by the Valuation Committee.

The purchaser cannot claim delivery when the seller is prevented by the insurer from disposing of the parcel.

#### § 6. *Disputes.*

I. If the purchaser is of opinion that the selected general sample (see § 2) does not agree with the sale sample, he shall, if an amicable settlement between him and the seller cannot be brought about, at the latest on the first Exchange day after the selection, report the matter to the Valuation and Arbitration Committee of Copenhagen, at the same time sending the samples to the Committee and informing the seller in writing of his proceeding. If the Committee is of opinion that the selected general sample differs so essentially from the sale sample that the purchaser is entitled to reject the goods, the purchaser has a right to cancel the transaction. The seller is in such case neither compelled nor entitled to deliver another parcel, and he need not pay compensation.

If the purchaser has not accepted in due time a parcel of coffee sold to him, and the seller for such reason claims damages from him (see § 4 g), such damages shall also be fixed by the Committee.

II. Any dispute concerning this branch of commerce and this broker's note, whether it be with regard to the quality, the conduct of the parties or any other matter, shall without exception, if according to the broker's note it shall not be settled by means of arbitration at a place abroad, be submitted to and settled by the Valuation and Arbitration Committee for the Coffee Trade operating in Copenhagen.

The decision of the Committee shall be final and binding on the parties, and for no reason whatever — whether with regard to the merits of the case or to its formalities — can such decision be quashed or disregarded by the tribunals. If any person omits to comply with the finding of the Committee, the Committee is authorised to have this fact published by means of a placard at the Exchange. The Committee so long as its decision has not been complied with, cannot deal with any dispute in which the person in question is one of the parties, unless the matter concerns a transaction which was concluded before the publication took place. — If the Committee should find that the dispute is not suitable for an award to be rendered by it, the Committee makes known its decision to this effect, and the parties can then go before the tribunals.

Berettiger Slutsedlen til flere Leveringer, behandles hver Levering som en særskilt Kontrakt.

#### **Slutseddel for Handler i Kaffe, svømmende eller for Afskibning (vedtagen 1908—1909).**

##### *§ 1. Slutsedlen.*

Indsigelser imod Slutsedlen skulle fremsættes skriftlig og afleveres hos Medkontrahenten senest Kl. 12 paa den første Borsdag efter Forretningens Afslutning.

##### *§ 2. Salg efter Type.*

Salg efter Type sker paa Grundlag af den oversøiske Afladers Betingelser, og Sælgeren er forpligtet til paa Anfordring at levere Koberen en Kopi af disse.

Et svømmende Parti Kaffe, som købes i dansk Mønt efter udvejet Vægt, men efter en oversøisk Type, kommer for Arbitragens Vedkommende ind under de for Handler i „svømmende“ Kaffe gældende almindelige Bestemmelser, men er iøvrigt underkastet de for Kaffehandelen in loco i København gældende Regler.

Ved Køb fra oversøisk Plads bliver eventuel Arbitrage at foretage mellem Sælgeren og Afladeren eller dennes Repræsentant, iøvrigt paa den oversøiske Afladers Betingelser, og det er saaledes Sælgerens Ret til Arbitrage, der ved Slutsedlen overføres paa Koberen. Sælgeren er dog ansvarlig for, at den ved Arbitragen eventuelt tilkendte Godtgørelse bliver udbetalt Koberen.

Skulde den oversøiske Aflader ikke levere Kaffen af en eller anden den herværende Sælger utilregnelig Aarsag, som dog ikke kommer ind under Begrebet »force majeure«, skal Sælgeren uden Ophold underrette Koberen derom og er derefter pligtig, hvis Koberen forlanger det, at levere et andet Parti Kaffe fra en anden eller samme Aflader, af samme Art og af en Kvalitet, der saa nær som muligt svarer til den Type, hvorefter Partiet oprindeligt var solgt. Finder Koberen ikke dette Parti overensstemmende med den Typeprøve, hvorefter han har købt, kan han forlange Arbitrage imellem sig og den herværende Sælger foretaget paa den Plads, hvor det oprindeligt solgte Parti ifølge Slutsedlen skulde have været arbitreret, og paa Basis af den Type, hvorefter Partiet oprindeligt var solgt.

Naar Sælgeren har givet Koberen den ovenfor nævnte skriftlige Meddelelse, skal denne senest paafølgende Borsdag Kl. 3 skriftlig meddele Sælgeren, om han renoneerer paa den gjorte Forretning eller ønsker Levering i Henhold til ovenstaaende. I sidste Tilfælde har Sælgeren Ret til at forlange indtil 6 Ugers Afskibningsfrist fra den Dag, Koberen har erklæret, at han ønsker Partiet leveret.

Sælgeren skal, hvis Levering fordres, snarest muligt meddele Koberen, hvilket Parti han eventuelt leverer til Opfyldelse af Kontrakten.

##### *§ 3. Telquel Salg.*

Ved »Tel-quel« Salg er Koberen forpligtet til uden Indvending at modtage enhver Vare, naar den svarer til den Art Kaffe, hvorom der er kontraheret, dog er Levering af Triage Kaffe udelukket.

##### *§ 4. Fælles Vægtrisiko.*

Naar to eller flere Købere skulde modtage et Parti Kaffe, som ankommer hertil paa et Konnossement under eet uden Adskillelse med Hensyn til Mærker, bliver det samlede Parti i den originale Emballage, hvori det er ankommet, at veje ved autoriseret Vejer inden 8 Dage efter Skibets Ankomstdag. De forskellige Modtagere af et saadant Parti ere forpligtede til paa Tro og Love at opgive, hvor mange Pund Prøver de have ladet stikke af Partiet forinden Vejningen.

Forsømmer nogen af Modtagerne uden gyldig Grund at lade sin Del af Partiet veje, betragtes ved Vægtreguleringen af det samlede Parti hans Del som værende udvejet til 119 Pd. Netto pr. Sæk for Brasil-Kaffes Vedkommende og til Faktura-vægt for anden Kaffe.

If the broker's note authorises several deliveries, each delivery is treated as a separate contract.

**Broker's note for dealings in coffee afloat or to be shipped** (authorised 1908—1909).

§ 1. *The broker's note.*

Objections to the broker's note shall be made in writing and handed over to the other contracting party at the latest at twelve o'clock on the first Exchange day after the conclusion of the transaction.

§ 2. *Sale according to type.*

A sale according to type is concluded on the basis of the conditions of the overseas consignor, and the seller when requested shall hand over a copy of such conditions to the purchaser.

A parcel of coffee afloat, bought in Danish money according to weighed out weight, but according to an overseas type, is so far as arbitration is concerned subject to the general rules obtaining for transactions in coffee "afloat", but in other respects is subject to the rules obtaining for dealings in coffee *in loco* in Copenhagen.

In the case of sales concluded at an overseas place, eventual arbitration is carried out between the seller and the consignor or his representative, and on the basis of the conditions of the overseas consignor, and it is consequently the seller's right of arbitration which by means of the broker's note is transferred to the purchaser. The seller, however, has to see that any compensation awarded through arbitration is paid to the purchaser.

If the overseas consignor does not deliver the coffee for some cause not imputable to the seller who is domiciled here, a cause which however is not included in the term "*force majeure*", the seller must without delay inform the purchaser of such fact, and, if the purchaser demands it, deliver another parcel of coffee, shipped by another or the same consignor, of the same kind and of a quality which as nearly as possible corresponds to the type according to which the parcel was originally sold. If the purchaser finds that such parcel is not in accordance with the type sample by which he bought the goods, he can demand that an arbitration between himself and the seller domiciled here shall be held at the place where, according to the broker's note, the parcel which was originally sold should have been arbitrated upon, and on the basis of the type according to which the parcel was originally sold.

When the seller has given the purchaser the above-mentioned information in writing, the latter must notify the seller in writing at the latest on the following Exchange day at three o'clock whether he renounces the business done or desires delivery in conformity with the above provision. In the latter case the seller has a right to claim a period not exceeding six weeks for shipment, to be counted from the day on which the purchaser has declared that he desires the delivery of the parcel.

The seller, if delivery is demanded, must as soon as possible inform the purchaser what parcel he will eventually deliver with a view to carrying out the contract.

§ 3. *Sale "tel-quel".*

In the case of a sale "tel-quel", the purchaser is bound to receive, without making any objection, any merchandise when it corresponds to the species of coffee in respect of which the contract has been concluded, delivery of sorted coffee however being excluded.

§ 4. *Common risk of weight.*

When two or more purchasers receive a parcel of coffee which, without being separated according to marks, arrives here under one bill of lading, the entire parcel, in the original packing in which it has arrived, shall be weighed by an authorised weigher within eight days of the day of arrival of the vessel. The various receivers of such a parcel are bound in law and good faith to declare how many pounds of samples they have had selected from the parcel before the weighing took place.

If any of the receivers without valid reason omits to have his portion of the parcel weighed, at the adjustment of the weight of the entire parcel, his portion is considered as being weighed out at 119 pounds net per sack when Brazil coffee is concerned, and at invoice weight when other coffee is concerned.

Naar Opvejning har fundet Sted, opgør den sidste Ejer af det samlede Parit Vægtreguleringen og fremsender denne, ledsagede af de autoriserede Vægtsedler.

Beskadigede Dele af Partiet fordeles pro rata inellem Modtagerne.

#### § 5. *Assurance.*

Ved Salg „inklusive Fragt“ (c. f.) er Køberen forpligtet til, samtidig med Kobets Afslutning, at drage Omsorg for Partiets fulde Forsikring — Fakturabeløb plus 10 pCt. imaginær Avance — inklusive Lægterisiko og partikulært Havari fri for 3 pCt.

Er Partiet solgt imod Rembours eller anden Betalingsmaade, er Policen Af-skiberens eller Sælgerens retmæssige Ejendom, indtil Tratten er accepteret, eller den stipulerede Betalingsmaade ydet. Paa Sælgerens Forlangende skal Køberen forevise eller udlevere Police eller Assurancecertifikat in blanco endosseret, eller en Erklæring fra den Bank, gennem hvem Remboursen er aabnet, at Policen eller Assurancecertifikat er deponeret der og holdes til Disposition for Sælgeren, indtil Tratten er accepteret.

Ved Salg „inklusive Fragt og Assurance“ (cif) skal Sælgeren for Fakturabeløbet give Police eller Assurancecertifikat in blanco endosseret, udstedt af solide, anerkendte Assurandorer, inklusive Lægterisiko og partikulært Havari fri for 3 pCt. Ethvert Beløb, hvormed den af Sælgeren leverede Police eller Assurancecertifikat overstiger Fakturabeløbet, tilfalder Sælgeren i Tilfælde af totalt Forlis. Ved partikulært Havari fordeles Beløbet pro rata.

Sælgeren er endvidere forpligtet til uopholdelig at lade Køberen tilflyde skriftlig Meddelelse om enhver Efterretning, han maatte modtage vedrørende det solgte Parti.

#### § 6. *Kursregulering.*

Regulering af fremmed Mont til Kronemont foretages efter den paa Regningens eller Veksels Præsentationsdag i Kjøbenhavn gældende avista Kurs.

#### § 7. *Tristigheder.*

[Som Slutsedlen for Kaffe „in loco“ og „leveret“ § 6 II.]

### Slutseddel for Handler om Smør (vedtagen 1901).

#### § 1. *Om Kvantum.*

a) Ved „cirka“ forstaas, at Sælgeren har Ret til at levere indtil 5% mere eller mindre end det nævnte Kvantum.

b) „Fra—til“ giver Sælgeren Valget af ethvert mellemliggende Kvantum.

#### § 2. *Om Vejning.*

a) Brutto-Vægten optages kun paa hele og halve Pund.

b) Tareringen sker ved Stripning, forinden Brutto-Vægten optages. Hvad der af ubeskadiget Smør maatte findes at hænge ved Træet, afskrabes omhyggeligt, forinden Foustagen vejes, og tillægges Brutto-Vægten. Tara-Vægten optages for Tredjedelen og Fjerdingers Vedkommende i halve Pund og for Ottinger i  $\frac{1}{4}$  Pund, men saaledes, at Brokde heraf afrundes opefter.

Til Tara henregnes Salt, Gaze, Papir eller lign.

Er Smørret ophedet, træffes der særlige Bestemmelser mellem Køber og Sælger om Tareringen.

c) Smørret skal vejes med een Foustage ad Gangen og kun paa Balancevægt.

#### § 3. *Om Levering og Modtagelse.*

For saa vidt som Smørret er solgt:

a) at modtage fra Jernbane eller Skib, afholdes alle Udgifter fra Jernbane eller fra Skib af Køberen, og Modtagelsen skal være tilendebragt indenfor den Tidsfrist, disses Reglement bestemmer. Køberen er berettiget til at tage Smørret hjem til sit Lager for der at foretage det nødvendige med Hensyn til Vejning og Tarering. Naar Fragten skal betales af Køberen, er dermed kun underforstaaet

When the weighing has taken place, the last owner of the entire parcel in question settles the adjustment of the weight and forwards this accompanied by the authorised weighing certificates.

Averaged portions of the parcel are divided proportionately amongst the receivers.

### § 5. *Insurance.*

In the case of sales concluded on the terms "including freight" (c. f.), the purchaser, simultaneously with the conclusion of the sale, must see that the parcel sold is properly insured — for the invoice amount plus 10 per cent. imaginary profit — including the risk of lighterage, and particular average free under 3 per cent.

If a parcel of goods has been sold against re-imbursement or other mode of payment, the policy is the lawful property of the consignor or the seller until the draft has been accepted, or payment according to the stipulated mode has been made. The purchaser, at the request of the seller, must show or surrender the policy or the insurance certificate endorsed in blank, or a declaration from the bank through which re-imbursement has been opened, to the effect that the policy or the insurance certificate has been deposited there, and is kept at the disposal of the seller until the draft has been accepted.

In the case of a sale "including freight and insurance" (c. i. f.), the seller must give a policy or insurance certificate endorsed in blank for the invoice amount, issued by solvent and recognised insurers, including the risk of lighterage, and particular average free under 3 per cent. Any amount by which the policy or the insurance certificate delivered by the seller exceeds the invoice amount, in the case of total loss belongs to the seller. In the case of particular average the amount is distributed *pro rata*.

Furthermore the seller must without delay communicate to the purchaser in writing any information he may receive concerning the parcel sold.

### § 6. *Exchange of currency.*

The exchange of foreign currency for Danish kroner is effected according to the rate of exchange at sight obtaining at Copenhagen on the day on which the bill or the draft is presented.

### *Disputes.*

[The same as the broker's note for coffee "*in loco*" and "*delivered*" § 6 II.]

### **Broker's note for dealings in butter (authorised 1901).**

#### § 1. *Quantity.*

a) The term "circa" means that the seller has a right to deliver up to 5 per cent. more or less than the stipulated quantity.

b) The clause "from—to" entitles the seller to choose any intermediate quantity.

#### § 2. *Weighing.*

a) The gross weight is only calculated in entire and half pounds.

b) The adjustment of the tare takes place by means of stripping before the gross weight is fixed. That part of the undeteriorated butter which is found sticking to the wood, is scraped off carefully before the tub is weighed and added to the gross weight. The tare, when thirds and quarters of tubs are dealt with, is estimated in half pounds, and when eighths of tubs are dealt with, in quarter pounds, but fractions of pounds are rounded off upwards.

Salt, gauze, paper etc. are calculated as tare.

If the butter has been heated, special rules apply between purchaser and seller with regard to how to fix the tare.

c) The butter shall be weighed by single tubs at a time and only on balance scales.

#### § 3. *Delivery and reception.*

In so far as butter is sold:

a) *To be received by railway or vessel*, all expenses of the railway or of the vessel are paid by the purchaser, and the reception of it must be effected within the period fixed in their regulations. The purchaser is entitled to take the butter to his warehouse in order to undertake there what is necessary with regard to weighing and the adjustment of the tare. When the freight is to be paid by the purchaser, only the

almindelig Fragttakst pr. Jernbane og Dampskib; i Tilfælde af Istransport eller Ilgodsforsendelse bærer Sælgeren den deraf opstaaede Fragt-Forøgelse, forudsat at denne Forsendelessmaade ikke er beordret af Koberen;

b) at modtage fra Sælgerens Lager, afholdes alle Udgifter inklusive Brandassurance af Sælgeren, indtil Smørret er leveret paa Vogn;

c) at levere ugentlig, ophører Koberens Forpligtelse til at modtage, naar Smørret paa de regelmæssige Afskibningsdage til England ikke er disponibelt for Koberen senest . . . . . Timer forinden det Klokkeslet, paa hvilket Dampskibenes officielle Modtagelsestid er sluttet. (For Kjøbenhavns Vedkommende skal Smørret være disponibelt senest Torsdag Kl. 12 eller, hvis Torsdagen er en Helligdag, den forudgaaende Søndag Kl. 12.)

#### § 4. Om Hindring af Levering.

Ser Sælgeren sig paa Grund af Ildebrand, Sprængning af Centrifuge eller anden ham utilregnelig ulykkelig Begivenhed helt eller delvis ude af Stand til at opfylde sine Forpligtelser, er Handelen ophævet for, hvad der som Følge heraf ikke kan leveres.

#### § 5. Om Tristigheder i Henseende til Kvalitet.

a) Ved Handler, hvor Kober og Sælger ere i Kjøbenhavn, gælde følgende Regler:

Er Smørret solgt paa Levering, og Koberen anser Leveringen for ukontraktmæssig i Henseende til Kvalitet, har han at give Sælgeren Meddelelse desangaaende. Kan Enighed ikke opnaas, skal Sagen forelægges for Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg for Smørhandelen. Begæring om Bedømmelse af det nævnte Udvalg, ledsaget af de fornødne Bilag og en skriftlig Fremstilling af de formentlige Mangler, maa indleveres paa Børskontoret senest 24 Timer (eller i Tilfælde af Helligdag, inden Kl. 12 den paafølgende Søndag), efter at Smørret er ankommet eller anmeldt disponibelt til Eftersyn.

b) Ved Handler mellem en Kober i Kjøbenhavn og en udenbys Sælger gælde følgende Bestemmelser;

Er Smørret solgt paa Levering, og Koberen anser Leveringen for ukontraktmæssig i Henseende til Kvalitet, har han pr. Telegram at give Sælgeren Meddelelse desangaaende samt afvente dennes Svar i 10 Dagtelegraftjeneste-Timer (Dagen regnet fra Kl. 8 Morgen til Kl. 8 Aften), efter at Koberen har indleveret Meddelelsen paa Telegrafstationen, forinden han foretager videre i Sagen. Kommer der intet Svar, eller det viser sig, at Enighed ikke kan opnaas, har Koberen inden 24 Timer, efter at Sælgerens Svar ifølge det foranførte skulde være her, at forholde sig paa samme Maade som under a anført.

c) Naar Forlangende om Bedømmelse indleveres paa Børskontoret en Søndags Formiddag inden Kl. 12, foretager Udvalget Sagen, om muligt, samme Dag og afgiver Kendelse i Overensstemmelse med de af Grosserer-Societetets Komite vedtagne Regler.

d) Ved Handler, hvor baade Sælger og Kober ere udenfor Kjøbenhavn, forholdes som ovenfor under a og b nævnt, dog at Kvalitetsbedømmelsen, hvor den paa Grund af Afstanden ikke kan foregaa ved Kjøbenhavns Bedømmelses-Udvalg, finder Sted enten ved det paa Stedet dannede Bedømmelses-Udvalg, der har forpligtet sig til at virke paa Grundlag af de af Grosserer-Societetets Komite givne Regler, eller paa anden, mellem Parterne forud udtrykkelig aftalt Maade.

e) Udvalgets Kendelser ere absolut bindende for begge Parter, og den Part, hvem Kendelsen gaar imod, bærer alle Omkostninger, der foranlediges af Under søgelsen, derunder Vederlaget for Kendelsen (jfr. § 7).

f) Overstiger en tilkendt Erstatning for Kvalitetsmangler 5% af den oprindelig aftalte Pris, er Koberen berettiget til at refusere Partiet, men har da intet Krav paa Godtgørelse.

At større eller mindre Dele erkendes for ukontraktmæssige, berettiger ikke til at hæve Handelen for Resten.



ordinary rates and freights applicable to railways and steamers are meant; in the case of transport by ice or fast transport, the seller pays the increase of freight thereby incurred, provided this mode of transport has not been ordered by the purchaser;

b) *To be received from the seller's warehouse*, all expenses, including fire insurance, are paid by the seller until the butter has been delivered on the waggon;

c) *To be delivered by the week*, the purchaser's obligation to receive ceases when the butter sold on the regular days fixed for shipment to England, is not at the disposal of the purchaser at the latest . . . hours before the time at which the official reception of goods by the steamers is closed. (In Copenhagen butter must be at disposal at the latest at twelve o'clock on Thursdays, or in the case of Thursday being a holiday, on the previous working day at twelve o'clock).

#### § 4. *Obstacles to delivery.*

If the seller owing to fire, bursting of a cream separator, or other unhappy event for which he is not to blame, is entirely or in part unable to fulfil his obligations, the transaction is cancelled, so far as that portion of the merchandise sold which owing to such event cannot be delivered is concerned.

#### § 5. *Disputes in regard to quality.*

a) In the case of transactions in which the purchaser and seller are in Copenhagen, the following rules apply:

If butter has been sold to be delivered, and the purchaser considers that the quality of the butter delivered is not according to contract, he must inform the seller of his opinion. If an agreement cannot be arrived at, the matter is submitted to the Valuation and Arbitration Committee for the Butter Trade operating in Copenhagen. Requests for estimation to be made by the said Committee, accompanied by the necessary enclosures and a written précis of the alleged defects, must be sent to the Exchange Office at the latest 24 hours (or in the case of holidays by 12 o'clock on the next following business day) after the arrival of the butter or the placing of it at disposal for examination.

b) In the case of transactions between a purchaser living in Copenhagen and a seller living outside Copenhagen, the following rules apply:

If a certain parcel of butter has been sold to be delivered, and the purchaser considers that the quality which is delivered is not according to contract, he must inform the seller of his opinion by telegraph, and await his answer for ten hours of telegraphic service (the day is counted as from 8 a. m. to 8 p. m.) after the time at which he (the purchaser) handed in his message at the telegraph station, before undertaking anything further in the matter. If no answer arrives, or if it proves that an agreement cannot be arrived at, the purchaser, within 24 hours after the time at which the seller's answer, according to what has been said above, should have arrived here, has to proceed in a similar manner to that indicated under a.

c) If a request for estimation is handed in at the Exchange Office by 12 o'clock noon on a business day, the Committee, if possible, deals with the matter the same day, and makes its award according to the rules authorised by the Committee of the Wholesale Dealers' Society.

d) In the case of transactions where both the seller and the purchaser are living outside Copenhagen, the proceedings are as stated under a and b, the estimation of the quality, however, where owing to the distance it cannot be undertaken by the Valuation Committee of Copenhagen, is effected either by the Valuation Committee established for this purpose on the spot, which has pledged itself to operate in accordance with the rules authorised by the Committee of the Wholesale Dealers' Society, or in some manner expressly stipulated between the parties.

e) The awards of the Committee are absolutely binding on both parties, and the party against whom an award is given, defrays all the expenses incurred by the examination, including the fee for the award (see § 7).

f) If compensation awarded for defects of quality exceeds 5 per cent. of the originally stipulated price, the purchaser is entitled to reject the merchandise, but in such case he can claim no compensation.

The fact that greater or smaller portions of a parcel are declared as not being in accordance with the stipulations of the contract, does not entitle the purchaser to cancel the transaction in so far as the remainder of the parcel is concerned.

§ 6. *Om andre Tvistigheder.*

Alle andre Tvistigheder, der maatte opstaa angaaende nærværende Slutseddel, forelægges Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg til Afgørelse, og i ethvert saaledes forefaldende Spørgsmaal skal Udvalgets Kendelse være endelig og forbindende for Parterne, for saa vidt den ikke fastsætter en Erstatning, som overstiger 10% af det Værdibeløb, Slutsedlen omfatter; berettiger Slutsedlen til flere Leveringer, behandles hver Levering som særskilt Kontrakt. Overstiger Erstatningen 10%, eller finder Udvalget, at Tvisten ikke egner sig til dets Afgørelse, afsiger det Kendelse herom, og Parterne kunne da lade Sagen afgøre ad Rettens Vej.

§ 7. *Om Vederlag for afsagte Kendelser.*

a) For Kendelser om almindelig Kvalitets-Bedømmelse betales af den, hvem Sagen gaar imod,  $\frac{1}{2}\%$  af det omtvistede Partis Værdi efter Slutsedlen (jfr. ovfr. u. § 6), dog mindst 20 Kr., til det paagældende Udvalg.

b) For andre Voldgifts-Kendelser betales fra 50—200 Kr., efter Voldgifts-Udvalgets Bestemmelse, til Børskontoret i Kjøbenhavn.

**Slutseddel for Handler om Jern og Metaller til Levering direkte „fra Værk“**  
(vedtagen 1902).

§ 1. *Kvantum.*

a) „Cirka“ giver Køberen Ret til inden Specifikationsfristens Udlob at specificere indtil 5 pCt. mere eller mindre end det nævnte Kvantum til Kontraktpris.

b) „Fra — til“ giver Køberen Ret til inden Specifikationsfristens Udlob at specificere ethvert mellemliggende Kvantum til Kontraktpris.

c) Den kvantitative Afregning af et Kob sker efter det virkelig leverede Kvantum — ikke efter indsendte Specifikationer.

d) Saafremt Køberen specificerer udover det omhandlede Kvantum, beregnes det overskydende til den ved sidste Specifikations Indsendelse gældende Dagspris.

§ 2. *Specifikation (Dimensionsopgave).*

e) Minimumskvantum pr. Dimension. Drejer Handelen sig om et bestemt Værks Fabrikata, maa Kvantum af hver enkelt Dimension i Specifikationen ikke være mindre end det af det paagældende Værk stipulerede Minimumskvantum. Er der ikke nævnt noget bestemt Værk, har Sælgeren Ret til at forbeholde sig Værkets Sanktion paa Specifikationerne.

f) Dimensioner. Drejer Handelen sig om et bestemt Værks Fabrikata, kan Køberen ikke forlange leveret andre Dimensioner end dem, der indgaa under Salgskontrakten, og som udvalses ved det paagældende Værk ifølge dettes Valseprogram. Er der ikke nævnt noget bestemt Værk, kan Køberen kun forlange leveret saadanne almindelige gangbare Dimensioner, som det leverende Værk kan præstere.

g) Specifikationsfrist. Hvis Specifikationerne ikke af Køberen indsendes indenfor den fastsatte Frist, staar det Sælgeren frit for, efter forudgaaet skriftlig Opfordring, straks at læve Handelen, saafremt Specifikationerne ikke følge omgaaende. Hvis Sælgeren ikke hæver Handelen, da er Køberen bunden til Handelen ogsaa efter Specifikationsfristens Udlob. Drejer Handelen sig om et „cirka“ eller „fra — til“ Kvantum (se § 1, a. b.), har Sælgeren i saa Fald Ret til at fordre specificeret henholdsvis det nævnte Kvantum eller Mellemkvantum.

h) Maal. Naar intet andet bemærkes paa Specifikationen, ndvalses alt svensk Jern og svenske Plader i svensk Maal og alt tysk og engelsk Jern samt Plader, Jernrør og Fittings i engelsk Maal.

Opgiven Vægt pr. Plade betragtes som dansk Vægt.

Naar intet er stipuleret med Hensyn til Længden af svensk, tysk og engelsk Stangjern samt trukne Jernrør, leveres almindelige for Kjøbenhavns Jernlagre gangbare Længder.

### § 6. *Concerning other disputes.*

All other disputes arising with regard to this broker's note are submitted for decision to the Valuation and Arbitration Committee of Copenhagen, and in every matter submitted to it the award of the Committee is final and binding on the parties, provided that it does not fix compensation exceeding 10 per cent. of the value comprised in the broker's note; if the broker's note authorises several deliveries, each delivery is treated as a separate contract. If the compensation exceeds 10 per cent., or the Committee finds that the dispute in question is not suitable for decision by itself, the Committee makes an award to this effect, and the parties can then have the matter decided on by the tribunals.

### § 7. *Fees for awards.*

a) For an award concerning an estimation of ordinary quality, the party against whom the award is given, pays to the arbitrating Committee  $\frac{1}{2}$  per cent. of the value of the contested parcel of merchandise according to the broker's note (see above § 6), with a minimum of 20 kroner.

b) For other arbitral awards fees amounting to from fifty to two hundred kroner are paid to the Exchange Office in Copenhagen according to the decision of the Arbitration Committee.

## **Broker's note for dealings in iron and metals to be delivered direct "from works"** (authorised 1902).

### § 1. *Quantity.*

a) The term "circa" gives the purchaser a right before the expiration of the period for the specification, to specify at contract price up to 5 per cent. more or less than the stipulated quantity.

b) The clause "from—to" gives the purchaser a right before the expiration of the period for the specification to specify at contract price any intermediate quantity.

c) The adjustment of the quantity of a sale takes place according to the quantity actually delivered — not according to the specification which has been sent.

d) If the purchaser specifies more than the stipulated quantity, the excess is calculated at the current price obtaining at the time when the last specification was sent.

### § 2. *Specification (Indication of dimensions).*

e) *Minimum quantity per dimension.* If the transaction deals with the products of specified works, the quantity of each single dimension of the specification must not be less than the minimum quantity stipulated by the works in question. If definite works are not mentioned, the seller has a right to make the reservation that the works shall sanction the specifications.

f) *Dimensions.* If the transaction deals with the products of specified works, the purchaser cannot claim the delivery of other dimensions than those mentioned in the contract of sale and those rolled out at the works in question according to its programme for rolling out metals. If definite works have not been mentioned, the purchaser can only claim delivery of such ordinary current dimensions as the delivering works can provide.

g) *The period for the specification.* If the purchaser does not send the specifications within the stipulated period, the seller is at liberty, after having sent previous notice in writing to this effect, immediately to cancel the transaction, provided the specifications do not arrive by return of post. If the seller does not cancel the transaction, it is also binding on the purchaser after the expiration of the period for the specification. If the transaction deals with a quantity stipulated with the clauses "circa" or "from to" (see § 1, a, b), the seller in such case has a right to demand that the quantity mentioned or the intermediate quantity respectively shall be specified.

h) *Measures.* If nothing to the contrary is said in the specification, all Swedish iron and Swedish plates are rolled out according to Swedish measure, and all German and English iron and plates, iron tubes and fittings, according to English measure.

The weight indicated per plate is considered as Danish weight.

If nothing has been stipulated with regard to the length of Swedish, German and English iron bars and drawn iron tubes, the ordinary lengths current at the iron warehouses of Copenhagen are delivered.

Maalenes Nojagtighed retter sig, naar intet andet er vedtaget, efter de leverende Værkers Konditioner eller Coutumer i denne Henseende; for støbte Jernrør er en Vægtdifference pr. Længde af indtil 3 pCt. tilladelig.

Onskes Længder og Formater i „fikse Maal“, maa dette udtrykkelig bemærkes og betales med de leverende Værkers Overpriser herfor.

### § 3. *Kvalitet.*

i) Indeholder Slutsedlen ikke særlige Betingelser med Hensyn til Kvalitet, kan Varerne kun forlanges leverede i de paagældende Værkers almindelige Handelskvalitet eller svarende til et navngivet Stempels sædvanlige Kvalitet.

I Tilfælde af rettidige Reklamationer angaaende ukontraktmæssig Levering har Køberen samme Regres ligeoverfor Sælgeren, som denne har ligeoverfor det leverende Værk, ifølge dettes Betingelser i denne Henseende, og hvad Værket eventuelt ved saadanne Reklamationer maatte tilkende Sælgeren, er denne forpligtet til at refundere Køberen.

k) Indeholder Slutsedlen særlige Betingelser med Hensyn til Kvaliteten, er Køberen berettiget til at overvære Materialernes Provning ved Værket, og hans Antagelse der er da definitiv med Hensyn til Kvaliteten.

Undlader Køberen at overvære Materialernes Provning ved Værket, skal en Udskrift af Værkets Proveprotokol være fuldt Bevis for Varernes Kvalitet.

### § 4. *Levering.*

l) Ved alle Salg „fob“, „ab Værk“, „fragtfrit“ eller „cif“ ere Sælgerens Forpligtelser opfyldte, naar han paa det fastsatte Afsendelsessted rettidig indlader kontraktmæssige Varer og i sidste Tilfælde — ved „cif“ Salg — assurerer dem (se Assurance).

Er Varen solgt „fragtfrit“ eller „cif“, er Køberen pligtig at betale Fragtbeløbet for Sælgerens Regning kontant uden Rentegodtgørelse.

m) Jærnbaneforsendelse. Sælgeren er kun pligtig til at levere i aabne Jærnbanevogne. Onskes Befordring i lukkede eller med Presenning dækkede Vogne, maa dette udtrykkelig bemærkes af Køberen og betales af denne, medmindre Varen ifølge Afsendelseslandets Befordringsreglement kan afsendes i lukkede Vogne uden Ekstrabetaling.

n) Isklausul. Ved alle Forsendelser søværts om Vinteren er Køberen underkastet sædvanlig Isklausul og maa bære eventuelle deraf følgende Omkostninger.

o) Lossedage. Til Losning af Sejlskibe tilkommer der Køberen Lossedage i Overensstemmelse med dansk Solov, hvis intet andet er bestemt.

p) Leveringsforpligtelse indenfor en vis Frist paahviler ikke Sælgeren, medmindre dette udtrykkelig er stipuleret i Kontrakten.

### § 5. *Assurance.*

Ved alle „cif“ Salg skal Sælgeren for Fakturabeløbet give Police, udstedt af anerkendt solide Assurandører paa sædvanlige Betingelser, d. v. s. saaledes, at Assurance dækker Beskadigelse i Tilfælde af Stranding, Ild, Is eller Kollision. Saafremt Policen skal dække partikulær Beskadigelse eller imaginær Avance, maa Køberen give Sælgeren skriftlig Meddelelse herom, og sker saadant da for Køberens Regning.

### § 6. *Forhindring af Levering.*

q) Ophævelse af Kontrakten. Force majeure, hvortil ogsaa henregnes Krig eller Mobilisering i det Land, hvor Værket ligger, berettiger Sælgeren til helt eller delvis at hæve Kontrakten.

Dersom Levering af et navngivet Værks Fabrikata (eventuelt et indregistreret Varemærke) bevislig umuliggøres ved Værkets Betalingsstandsning, Konkurs eller ved Værkets Brand eller anden fuldstændig Odelæggelse, er Handelen gensidig hævet.

The exactitude of the measures, when nothing to the contrary has been stipulated, is determined according to the conditions and customs obtaining in this respect at the delivering works; for cast iron tubes a difference in the weight of up to 3 per cent. per length is permitted.

If lengths and sizes are desired according to "fixed measure", this must be expressly mentioned and the supplementary prices obtaining in this respect at the delivering works must be paid.

### § 3. *Quality.*

i) If the broker's note contains no special conditions with regard to quality, the delivery of the goods can only be demanded in conformity with the ordinary commercial quality of the goods produced at the works in question or with the ordinary quality of a given mark.

In the case of protests made in due time with regard to deliveries not being in accordance with the contract, the purchaser has the same right of recourse against the seller, as the seller has against the delivering works according to its regulations obtaining in this respect, and what the works owing to such claims may eventually award to the seller, he is liable to refund to the purchaser.

k) If the broker's note contains special stipulations with regard to the quality, the purchaser has a right to be present at the works when the materials are tested, and his consent given there with regard to their quality is final.

If the purchaser neglects to be present at the works when the materials are tested, a copy of the testing record of the works is considered full proof of the quality of the goods.

### § 4. *Delivery.*

l) In all sales on the terms "f. o. b.", "from the works", "freight-free" or "c. i. f." the obligations of the seller are fulfilled when in due time and at the stipulated place of loading he loads goods in conformity with the contract, and in the latter case — when sales "c. i. f." are concerned — insures them (see Insurance).

If the merchandise is sold "freight-free" or "c. i. f.", the purchaser is liable to pay the amount of the freight in cash for the account of the seller without compensation for interest.

m) *Sending by railway.* The seller is only liable to deliver goods in open railway waggons. If a purchaser desires that goods shall be sent in closed waggons, or in waggons covered with tarpaulins, he must express such desire and pay the expenses incurred thereby, unless the goods according to the traffic regulations of the country from which they are sent, can be sent in closed waggons without extra charge.

n) *Clause concerning ice.* In the case of all shipments effected during the winter, the purchaser is bound to observe the usual clause concerning ice, and to pay the expenses eventually arising out of it.

o) *Days for unloading (lay days).* For the unloading of sailing vessels the purchaser is entitled to lay days according to Danish maritime law, provided that nothing to the contrary has been stipulated.

p) *The obligation to deliver* within a certain period is not incumbent on the seller, unless such obligation has been expressly stipulated in the contract.

### § 5. *Insurance.*

In the case of all "c. i. f." sales the seller must send a policy for the invoice amount, issued by recognised and solvent insurers on the usual conditions, i. e. that the insurance covers damage in case of shipwreck, fire, ice or collision. If the policy is to cover any particular damage or imaginary gain, the purchaser must inform the seller of this in writing, and the insurance is then effected at the expense of the purchaser.

### § 6. *Obstacles to delivery.*

q) *Cancellation of the contract.* Unavoidable events (*force majeure*) to which also belong war and mobilisation in the country where the works are situated, entitle the seller to cancel the contract in its entirety or in part.

If the delivery of the products of specified works (destined for the manufacture of such products as have registered trade marks) is proved to be impossible owing to the suspension of payments of the works, their bankruptcy, or destruction by fire or other complete destruction, the transaction is reciprocally cancelled.

I begge Tilfælde er Sælgeren forpligtet til at give Køberen fornøden Meddelelse, saa snart det kommer til hans Kundskab.

r) Ophævelse af stipuleret Leveringstermin. Driftsforstyrrelse ved det Værk, hvortil en Ordre er indsendt, saasom Mangel paa Raamateriale, Vandmangel, Arbejdsstandsninger, Mangel paa disponible Jernbanevogne, Maskinbrud eller andre lignende Grunde, fritager Sælgeren for at overholde stipulerede Leveringstider, hvorom han er pligtig at underrette Køberen, saa snart det kommer til hans Kundskab.

#### § 7. *Twistigheder.*

Alle Twistigheder, der maatte opstaa angaaende denne Handel, forelægges Kjøbenhavns Voldgifts-Udvalg for Jern- og Metalbranchen til Afgørelse, og Udalgelse Kendelse skal være endelig og verbindende for begge Parter.

Skommer Udvalget, at Tvisten ikke egner sig til dets Afgørelse, afgiver det Kendelse herom, og Parterne kunne da lade Sagen afgøre ad Rettens Vej.

#### Slutseddel for Handler om Sædefro.

Med Hensyn til Handler om Sædefro er udarbejdet en Slutseddel, der dog aldrig er endelig vedtagen. Den indeholder følgende „Almindelige Bestemmelser.“

#### *Salgsproven.*

§ 1. Naar der ved en Handel om Fro i Partier af Sælgeren præsenteres Køberen en Prove af det omhandlede Froparti (Salgsproven), afgiver denne Prove i Forbindelse med Slutsedlen Grundlaget for Handelen og for en eventuel Bedømmelse og Voldgift.

2. Naar det ved Handelens Afslutning ikke udtrykkelig er fremhævet af Sælgeren, at Salgsproven er en „Gennemsnitsprove“ eller „Typeprove“, har Køberen Ret til at forudsætte, at Salgsproven repræsenterer et effektivt ensartet Parti, og til at fordrer, at Leveringen svarer dertil.

Betegnes Salgsproven som Gennemsnitsprove, forstaas derved, at den vel er udtaget af et effektivt Parti, men at Partiet ikke helt igennem er ensartet. Ved Udtagning af Prover af Leveringen, ville disse derfor indbyrdes kunne vise nogen Differens, men styrtet og egaliseret skal Leveringen svare til Gennemsnitsproven.

Betegnes Salgsproven som Typeprove, forstaas derved, at den ikke er udtagen af det Parti, der bliver at levere, men at Leveringen i det væsentlige skal have samme Karakter som Typeproven og i det hele ikke være af ringere Værdi som almindelig Handelsvare.

3. Det paahviler Sælgeren at lade Salgsproven forsegle, enten selv eller ved sin Repræsentant eller ved Mægler. — Er der handlet pr. Brevveksling efter fremsendt Prove og uden Mellenmand, skal Sælgeren umiddelbart efter Handelens Afslutning eller inden Udløbet af en i Slutsedlen udtrykkelig angiven Tidsfrist afsende et Duplikat af Salgsproven i mindst 2 forseglede Eksemplarer, hvoraf det ene kan brydes af Køberen.

Opstaar der Unighed mellem Sælger og Køber om den oprindelig præsenterede, uforslede Salgsproves Overensstemmelse med de senere fremsendte forseglede Salgsprover, bliver Sagen at forelægge Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg for Frohandelen, der foretager Sammenligning mellem de nævnte Prover og afgiver Kendelse om, hvorvidt de ere overensstemmende. Gaar Kendelsen ud paa, at dette ikke er Tilfældet, kan Sagen ikke blive Genstand for Voldgift, og Parterne kunne da lade den afgøre ad Rettens Vej.

#### *Kvantum.*

4. Ved „cirka“ forstaas, at Sælgeren har Ret til at levere indtil 5% mere eller mindre end det omhandlede Kvantum. „Fra — til“ giver Sælgeren Valget af ethvert mellemliggende Kvantum.

#### *Vægten.*

5. Ved Salg „in loco“, fra Skib, fra Pakhus, fra Jernbane eller Plads og ved Salg „leveret“ kan Varen forlanges vejlet ved autoriseret Vejer, i hvilke Tilfælde den takstmæssige Betaling for Vejningen udredes af Køberen. Læsepengene be-

In both cases the seller is bound to send the purchaser due information, as soon as he becomes cognisant of such occurrence.

r) *Cancellation of stipulated times for delivery.* Interruption of the carrying on of the works to which an order has been sent, as well as lack of raw materials or water, strikes, absence of available railway waggons, breakage of machinery, or other similar reasons, exempt the seller from observing the stipulated times for delivery; but he must inform the purchaser of such occurrences as soon as they come to his knowledge.

#### § 7. *Disputes.*

All disputes arising out of this trade are submitted for decision to the Arbitration Committee for the Iron and Metal Branch of Copenhagen, and the awards of the Committee are final and binding on both parties.

If the Committee finds that a dispute is not suitable for its decision, the Committee makes an award to this effect, whereupon the parties may have the matter decided upon by the tribunals.

#### **Broker's note for dealings in seeds.**

With regard to transactions in seeds, a broker's note has been drafted, which, however, has never been finally authorised. It contains the following "general rules".

#### *Sale samples.*

§ 1. When in dealings in parcels of seed the seller submits to the purchaser a sample of the parcel in question (the sale sample), this sample together with the broker's note are the basis of the transaction and of an eventual estimate and arbitration.

2. If on the conclusion of a transaction it has not been expressly pointed out by the seller that the sale sample is an "average sample" or a "type sample", the purchaser is entitled to assume that the sale sample represents a parcel which is virtually uniform, and to demand that the goods delivered shall correspond with it.

If the sale sample is designated as an *average sample*, it is certainly understood to have been chosen out of an actual parcel of goods, but the parcel is not considered uniform all through. On the selection of delivery samples out of the parcel, the respective samples may therefore be somewhat different, but mixed and equalized the goods delivered must correspond with the average sample.

If the sale sample is designated as a *type sample*, it is understood not to have been selected from the parcel which is to be delivered, but that the goods shall essentially be of the same kind as the type sample and in general not be of a quality inferior to ordinary commercial goods.

3. It is incumbent on the seller to have the sale sample sealed, either by himself in person or by his representative or by a broker. — If negotiations have been carried on by correspondence on the basis of a sale sample sent to the purchaser and without intermediary, the seller, immediately on the conclusion of the transaction or within the expiration of a period expressly stipulated in the broker's note, shall send a duplicate of the sale sample in at least two sealed specimens, of which one may be opened by the purchaser.

If a dispute arises between seller and purchaser with regard to whether the originally presented and unsealed sale sample and the sealed sale samples which have been subsequently sent correspond, the matter must be submitted to the Valuation and Arbitration Committee for Dealings in Seeds operating in Copenhagen, which will compare the samples and make its award as to whether they correspond. If the award is to the effect that this is not the case, the matter cannot be submitted to arbitration, and the parties may then have it decided on before the tribunals.

#### *Quantity.*

4. By the term "circa" is meant that the seller has a right to deliver up to 5 per cent. more or less than the quantity mentioned. The clause "from—to" entitles the seller to choose any intermediate quantity.

#### *Weight.*

5. In the case of sales "in loco", from a warehouse, from a railroad or a place, and in the case of sales "delivered", it may be demanded that the merchandise shall be weighed by an authorised weigher, in which case the tariff fee for the weigh-

tales af Køberen. Ved Salg frit om Bord (fob), inklusive Fragt og Assurance (eif), inklusive Fragt (ef) eller frit paa Bane er Modtageren paa Bestemmelsesstedet forpligtet til at anerkende den fakturerede Vægt, naar Fakturaen bilægges med et efter Omstændighederne fyldestgørende Bevis for, at Vægten har været rigtig ved Afsendelsen, og at Emballagen har været forsvarlig.

*Salg in loco og leveret.*

6. Ved Salg „in loco“ og „leveret“ skal Sælgeren give Køberen Adgang til at udtage Prove af Varen til Bedømmelse forinden Modtagelsen.

Finder Køberen ikke Varen kontraktmæssig, har han snarest muligt og senest inden 24 Timer efter, at der er givet ham Adgang til Prøveudtagning, og hvis Helligdag kommer imellem, inden Kl. 2 paafølgende Søndag, at underrette Sælgeren derom, og kunne Parterne da ikke enes om Differensen og dens Ordning, skal Sagen forelægges til Afgørelse af Kjøbenhavns Bedømmelses- og Voldgifts-Udvalg for Frøhandelen efter de for dettes Virksomhed gældende Regler og i Overensstemmelse med nedenstaaende §§ 12—17.

*Salg job, cif og cf. — Partipróven.*

7. Naar en Vare er solgt fob, eif eller cf, at aflade fra europæisk Plads og at betale ved Fremkomsten af Afladepapirerne, skal Sælgeren, for han afsender Varen, tilstille Køberen 3 forseglede Prover af Partiet (Partipróve) til Godkendelse eller udtrykkelig og skriftlig erklære, at han erkender de under § 1 eller § 3 nævnte Prover som gældende Partipróve. Efter Modtagelsen af Partipróven eller Erklæringen skal Køberen snarest muligt og senest inden 2 Gange 24 Timer (Søn- og Helligdage ikke medregnede) meddele Sælgeren, om han godkender Partipróven eller ikke, og i sidste Tilfælde angive de Punkter, hvori han finder Differenser, samt omhyggelig opbevare mindst een af Proverne i ubrudt Stand. Gor Køberen ikke saadan Indsigelse i rette Tid, kan han ikke nægte at indløse Afladepapirerne ved disses Fremkomst og modtage Varen, men beholder sin Ret til at faa Differensen godtgjort.

8. Afsender Sælgeren Partiet uden at afvente Køberens Godkendelse af Partipróven, og der gøres Indsigelse mod denne, eller han afsender Partiet trods Køberens Indsigelse, skal Køberen inden 24 Timer efter, at han har modtaget Meddelelse om Partiets Afsendelse, fremlægge Salgspróve og Partipróve til Bedømmelse af Udvalget, der hurtigst muligt afgiver skriftlig Erklæring om Bedømmelsens Udfald, og kan Køberen da afvente denne Kendelse, der er absolut bindende for begge Parter, forinden han er pligtig til at yde den stipulerede Betaling.

9. 1. Finder Udvalget Køberens Indsigelse ubegrundet, har han straks efter at have modtaget Udvalgets Kendelse derom at indfri Afladepapirerne, hvis de ere fremkomne, eller ved deres Fremkomst. — 2. Ansætter Udvalget en mindre Differens end anført i § 12, er Køberen forpligtet til at indfri Afladepapirerne, naar Sælgeren tilsikrer ham den af Udvalget fastsatte Godtgørelse og Betalingen af Omkostningerne ved Bedømmelsen. — 3. Giver Udvalgets Bedømmelse Køberen Ret til efter Bestemmelsen i § 12 at kassere Partiet, bortfalder hans Forpligtelse til Indfrielse af Afladepapirerne, men han maa da omgaaende meddele Sælgeren dette.

1 Analogi hermed forholdes, hvis Betalingen er stipuleret erlagt paa anden Maade.

10. Naar Køberen forlanger Varen afsendt uopholdelig, eller den aflades fra oversøiske Pladser, kan Sælgeren afsende Partipróven samtidig med Afladepapirerne, men Køberen er da ikke forpligtet til at indløse disse, før Partipróven er godkendt, eventuelt efter Reglerne i § 8 sidste Stykke og § 9 første Stykke.

1 Tilfælde af Uoverensstemmelse mellem Salgspróven og Partipróven gælder det i § 9 Punkt 2 & 3 anførte, og skal Køberen, naar Partipróven kasseres, drage



ing is defrayed by the purchaser. The loading money is paid by the purchaser. In the case of sales free on board (f. o. b.), including freight and insurance (c. i. f.), including freight (c. f.) or free to a railway, the receiver at the place of destination has to recognise the weight indicated in the invoice when to the invoice is attached an attestation furnishing satisfactory proof according to circumstances that the weight has been correct at the time of the sending of the goods, and that the packing has been properly carried out.

*Sales in loco and delivered.*

6. In the case of sales "in loco" and "delivered", the seller has to give the purchaser an opportunity to select a sample of the merchandise for estimation before reception of it.

If the purchaser finds that the merchandise is not in accordance with the contract, he must, as soon as possible and at the latest within 24 hours of the time at which he was given an opportunity of selecting samples, and if holidays intervene, by 2 o'clock on the next business day, inform the seller of his dissatisfaction, and if then the parties cannot agree as to their difference of opinion and its settlement, the matter shall be submitted for decision to the Valuation and Arbitration Committee for the Seed Trade of Copenhagen, according to the rules obtaining with regard to its operations, and according to §§ 12—17 below.

*Sales f. o. b., c. i. f. and c. f. — Samples of parcels.*

7. When merchandise has been sold f. o. b., c. i. f., or c. f., to be loaded at a European place, and to be paid for on the arrival of the shipping documents, the seller, before sending the merchandise, shall send to the purchaser three sealed samples of the sold parcel (bulk sample) for his approval, or declare expressly and in writing that he recognises the samples mentioned under § 1 or § 3 as a valid bulk sample. After having received the bulk sample or the declaration, the purchaser, as soon as possible and at the latest within twice twenty-four hours (Sundays and holidays not included), shall inform the seller whether he approves of the bulk sample or not, and in the latter case indicate the points where he finds differences, and carefully keep at least one of the samples unsealed. If the purchaser does not make such objection in due time, he cannot refuse to pay against the shipping documents on their arrival, and to receive the merchandise, but he retains his right of compensation in respect of the difference.

8. If the seller despatches the parcel without awaiting the purchaser's approval of the bulk sample, and if objection is made to this, or if he despatches the parcel in spite of the purchaser's objection, the purchaser, within twenty-four hours of having received information that the parcel has been despatched, shall submit a sale sample and a bulk sample for estimation to the Committee, which will as quickly as possible give its opinion in writing of the result of the estimation, and the purchaser can then await this award, which is absolutely binding on both parties, before he is bound to make the stipulated payment.

9. 1. If the Committee finds that the purchaser's objection is unfounded, he must, immediately on receiving the Committee's award to this effect, pay against the shipping documents if they have arrived, or, if not, on their arrival; — 2. If the Committee estimates that the difference is smaller than that indicated in § 12, the purchaser must pay against the shipping documents, provided the seller guarantees him the compensation fixed by the Committee, and the payment of the expenses of the estimation; — 3. If, according to the estimate of the Committee, the purchaser, as provided by the rule given in § 12, has a right to reject the merchandise, he is no longer bound to pay against the shipping documents, but in such case he must inform the seller of such occurrence by return of post.

The proceedings are analogous, if it has been stipulated that payment shall be made in some other manner.

10. If the purchaser demands the immediate despatch of the merchandise, or if it is to be loaded at overseas places, the seller can send the bulk sample simultaneously with the shipping papers, but in such case the purchaser need not pay against the documents until the bulk sample has been verified, if necessary according to the rules given in the last part of § 8 and the first paragraph of § 9.

In the case of disagreement between the sale sample and the bulk sample, that which is said in § 9 Nos. 2 and 3 obtains, and the purchaser, in case the bulk sample

Omsorg for, at Varerne, naar de ankomme, under for Sælgeren betryggende Former blive oplagte paa Pakhus for dennes Regning.

I de i §§ 9 & 10 anførte Tilfælde, hvori Partiproven kasseres, beholder Køberen i alle Tilfælde sin Ret til Erstatning, hvis Handelen misligholdes.

#### *Leveringen.*

11. Hvis Froet er betalt i Henhold til den modtagne Partiprove, og det, naar Leveringen fremkommer, konstateres, at den er afladet af anden Kvalitet end Partiproven, er Køberen berettiget til at kassere Partiet, fordre den erlagte Betaling med Renter og Omkostninger uopholdelig tilbagebetalt samt til at fordre Erstatning for Kontraktbrud. Tvistigheder i dette Tilfælde skulle ogsaa forelægges Udvalget til Afgørelse. Køberen har i dette og andre Tilfælde, hvor Leveringen ikke svarer til Partiproven, Ret til at forlange Salgsproven lagt til Grund for Fastsættelsen af Leveringens Mindre-Værdi uden Hensyn til, om han maatte have godkendt Partiproven.

12. Køberen har Ret til at kassere en Levering: 1. Naar Udvalget ansætter Kvalitetsmanglen til over 5% af den i Slutsedlen fastsatte Pris, dog til mindst 1 Kr. pr. Centner, i det Tilfælde, at Salget gælder et effektivt Parti, — eller over 10%, dog til mindst 2 Kr. pr. Centner, hvis Varen er solgt efter Typeprove eller uden Prove (kun med en Kvalitetsbetegnelse). — 2. Naar det af Udvalgets Bedømmelse utvivlsomt fremgaar, og dette udtales i Kendelsen, at der er leveret et andet Parti end solgt. — 3. Naar Leveringen i væsentlig Grad indeholder ondartet Ukrudtsfro, som ikke findes i Salgsproven eller i godkendt Partiprove, og Udvalget, med fornøden Hensyntagen til alle foreliggende Forhold, erklærer en Kassation af denne Grund beføjet.

13. Kasseres en Vare, har Sælgeren Ret til inden Leveringstidens Udlob at præstere en ny kontraktmæssig Levering i den kasseredes Sted. Sker det ikke, er han pligtig til at yde Køberen Erstatning efter Udvalgets Bestemmelse i en derom afgiven Kendelse, hvorpaa Reglerne i § 14 finde Anvendelse.

#### *Andre Tvistigheder.*

14. Ogsaa alle andre Tvistigheder, der maatte opstaa i Anledning af en afsluttet Handel, skulle forelægges Udvalget til Afgørelse, og dets Kendelse skal være endelig og forbindende for Parterne, naar den Differens eller Erstatning, som Udvalget fastsætter, ikke overskrider 10% af det Værdibeløb, Slutsedlen omfatter (jfr. ndf.). Overstiger den i en Udvalgs-Kendelse fastsatte Erstatning 10% af dette Værdibeløb, eller finder Udvalget, at Tvisten ikke egner sig til dets Afgørelse og afsiger Kendelse herom, kunne Parterne lade Sagen afgøre ad Rettens Vej.

Berettiger Slutsedlen til flere Leveringer, behandles hver Levering som særskilt Kontrakt.

#### *Udtagning af Prover.*

15. Hvis Prover af en formentlig ukontraktmæssig Levering skulle udtages til Bedømmelse og Voldgift, sker dette af Køberen og Sælgeren i Forening eller ved deres Repræsentanter. Er det ikke Køberen bekendt, at Sælgeren er paa Pladsen, eller her har en Repræsentant, eller undlader Sælgeren eller hans Repræsentant at efterkomme Køberens Opfordring til at deltage i Provens Udtagelse, eller kan Enighed ikke opnaas om, hvorledes Proven bliver at udtage, har Køberen (i de tvende sidste Tilfælde efter meddelt Underretning til Sælgeren eller hans paa Stedet værende Repræsentant) at lade en Gennemsnitsprøve udtage, i København ved Bedømmelses-Udvalget og for andre Steders Vedkommende ved tvende af Øvrigheden udmeldte uvildige og til Hvervet kyndige Mænd, der have at følge den Fremgangsmaade ved Provetagningen, som Udvalget foreskriver. Den udtagne Prove fyldes i en stærk Lærredspose, der forsegles af Udtagerne, forsynes med en Omslagspose og indsendes til Børskontoret, ledsaget af behørig Attest fra Udtagerne om, at Prøveudtagningen er udført paa den foreskrevne Maade.

is rejected, must see that on their arrival the goods are deposited in a warehouse for the account of the seller and under conditions giving him full security as to their safety.

In the cases mentioned in §§ 9 and 10 in which the bulk sample is rejected, the purchaser in any case retains his right to claim damages if the contract is broken.

#### *Delivery.*

11. If the seed has been paid for according to the bulk sample received, and if, on the arrival of the merchandise, it is proved that the quality of the merchandise which was loaded differs from the bulk sample, the purchaser is entitled to reject the parcel, to claim that repayment with interest and expenses shall immediately be made, and to claim damages for breach of contract. Disputes arising out of such cases shall be submitted to the Committee for decision. The purchaser, in this and other cases where the merchandise delivered does not correspond with the bulk sample, has a right to demand that the sale sample shall be considered as the basis of the estimate of the deficiency in value of the merchandise delivered, without having regard to whether he has approved of the bulk sample or not.

12. The purchaser has a right to reject the goods delivered: 1. When the Committee estimates the defect of quality at over 5 per cent. of the price stipulated in the broker's note, with a minimum of 1 krone per cwt., in the case of the sale having in view an actual parcel of goods, — or over 10 per cent., with a minimum of 2 kroner per cwt., if the goods have been sold according to a type sample or without sample (with an indication of quality only); — 2. When from the estimate of the Committee it undoubtedly results, and this is said in its award, that a parcel of goods different from that which had been sold, has been delivered; — 3. When the goods delivered contain in an essential degree seeds of weeds of a deleterious kind which are not to be found in the sale sample or in the approved bulk sample, and the Committee, having due regard to all the circumstances of the case, declares that a rejection on this ground is justified.

13. If merchandise is rejected, the seller, before the expiration of the time stipulated for delivery, has a right to provide a fresh parcel of goods, being in conformity with the contract, instead of the one which has been rejected. If this does not take place, he is liable to pay the purchaser compensation according to the estimate of the Committee to be given in an award to which the rules in § 14 apply.

#### *Other disputes.*

14. Also all other disputes which arise in connection with a concluded transaction shall be submitted to the Committee for decision, and its award shall be final and binding on the parties, provided the difference or the compensation which the Committee fixes does not exceed 10 per cent. of the amount of the value comprised in the broker's note (see below). If the compensation fixed by an award of the Committee exceeds 10 per cent. of such amount, or the Committee finds that the dispute is not suitable for its decision, the parties may have recourse to the tribunals.

If the broker's note provides that the goods may be delivered in instalments each delivery is dealt with as a separate contract.

#### *Selection of samples.*

15. When samples are selected for estimation and arbitration from a parcel of goods delivered which are alleged not to be in conformity with the contract, such selection is undertaken by the purchaser and the seller together, or by their representatives. If the purchaser is not aware that the seller is on the spot, or has a representative here, or if the seller or his representative omits to comply with the purchaser's request for one or the other to take part in the selection of the sample, or if agreement cannot be arrived at as to how the sample shall be selected, the purchaser (in the two latter cases after having informed the seller or his representative domiciled on the spot) must have an average sample selected, in Copenhagen by the Valuation Committee, and at other places by two impartial and competent men nominated for this purpose by the Authority, and these men, when selecting samples, must follow the proceedings as prescribed by the Committee. The selected sample is poured into a strong linen bag which is sealed by the persons who have undertaken the selection, is provided with an outer bag as an envelope and sent to the Exchange Office, accompanied by a sufficient certificate from the same persons to the effect that the selection has been carried out as prescribed.

*Analyse.*

16. Er der ved en Handel foruden Leveringens Overensstemmelse med Salgsproven garanteret en Analyse eller en bestemt Renhed og Spireevne, har Køberen at modtage og betale Leveringen, naar denne efter sædvanligt kobmandsmæssigt Skøn befindes stemmende med Salgsproven eller godkendt Partiprove, og kan ikke fordre at udsætte Modtagelse og Betaling, til Analysens Resultater foreligge, naar ikke særlige Bestemmelser ere tagne derom ved Handelens Afslutning. Giver derefter en Analyse, foretagen af en anerkendt Frøkontrol, saa lave Analysetal, at de ligge udenfor det sædvanlige Spillerum, har Sælgeren at godtgøre Differensen. Hvis Sælgeren ønsker det, har han Ret til at forlange Analysen gentaget af Dansk Frøkontrol for egen Regning, og Erstatningen bliver da at beregne efter den højeste Analyse.

17. Det Sælgeren indrømmede Analysespillerum er følgende: 2% Renhed og 4% Spireevne, eller 5% rent spiret Frø med højst 2% Renhedsdifferens. En mindre Mangel i Spireevnen kan dækkes af en tilsvarende højere Renhed, men ikke omvendt, medmindre Renhedsdifferensen er af absolut uskadelig Art. Hvis Leveringens Analysetal ligger indenfor dette Spillerum, kan intet Erstatningskrav gores gældende, ligge Analysetallene udenfor Spillerummet, tilkommer der Køberen Erstatning for Værdien af hele Differensen mellem de garanterede Tal og Leveringens Analysetal, saa at der i dette Tilfælde ikke tages Hensyn til Spillerummet.

*Omkostninger.*

18. Omkostningerne ved Bedømmelse og Voldgift fastsættes for hvert enkelt Tilfælde af Udvalget. For Kvalitetsbedømmelse, paakaldt af en enkelt Part, betales 25—50 Kr. For Voldgift betales 30—100 Kr., der i Reglen bliver at betale af den Part, hvem Kendelsen er gaaet imod, dog at Udvalget har Ret til efter sit Skøn at fordele Beløbet paa Parterne.

De for Kendelser fastsatte Beløb indbetales til Grosserer-Societetets Komites Kasse, der afholder alle ved Udvalgets Virksomhed foranledigede Udgifter.

**e) Handelskommission.**

Handelskommission i teknisk Forstand foreligger, naar en Person (Kommittenten) anmoder om, og en anden (Kommissionæren) paatager sig for Kommittentens Regning, men i Kommissionærens eget Navn at afslutte en eller flere til Handelsomsætningen hørende Retshandler med en Tredjemand.

Hovedformer af Kontrakten ere Indkøbskommission og Salgskommission, hvilken sidste hyppig benævnes Konsignation.

Jævnlig vil det være faktisk tvivlsomt, om der foreligger et egentligt Kommissionsforhold eller et almindeligt Fuldmagtsforhold, saaledes at den Befuldmægtigede skal optræde i Fuldmagtgiverens og ikke i eget Navn. Naar en Person, der giver sig af med Kommissionsforretning, bemyndiges til Udførelse af en Handelsforretning, maa Formodningen dog være for, at den Bemyndigede skal handle i eget Navn.

Genstand for Retsstrid er det derhos ofte, om Varer, som ere sendte fra en Næringsdrivende til en Anden, ere solgte til denne sidste eller givne ham i Konsignation. Afgørelsen maa i saa Fald mere bygges paa, hvad der oplyses om Forholdets reelle Indhold end paa den ved Forholdets Stiftelse benyttede Terminologi. Formodningen maa nærmest være for Salg, naar Vareforsendelsen er foregaaet paa Modtagerens Risiko, eller det er vedtaget, at Modtageren skal svare en bestemt Pris for Varen uden Hensyn til, hvad han selv faaer for den. Derimod maa Formodningen være for Kommission, naar der foreligger Vedtagelse om Provision, eller der er sendt Meddelelse til Afsenderen om stedfundet Salg. Overhovedet er det naturligvis af Betydning, hvilke Tilkendegivelser der ere sket ved Varernes Afsendelse eller i øvrigt, og hvorvidt Modparten har forholdt sig tavs overfor saadanne. Ogsaa Parternes Bogføring kan være af Betydning. At Køberen har betinget sig Ret til at sende de Varer tilbage, som han ikke kan afhænde eller ikke

*Analysis.*

16. If, at the conclusion of a transaction, besides the agreement of the goods with the sale sample, an analysis or a certain purity and power of germination has been guaranteed, the purchaser must receive and pay for the goods when, according to an ordinary commercial estimate, they are found to correspond with the sale sample or an approved bulk sample, and he is not entitled to postpone the reception of the goods and payment for them until the results of the analysis are available, when no special stipulations have been made at the conclusion of the transaction. If a subsequent analysis, undertaken by a recognised seed testing establishment, results in such low analysis figures as to be outside the usually allowed margin, the seller must make compensation for the difference. If the seller desires it, he is entitled to demand that the analysis shall be made over again by a Danish seed testing establishment on his own account, and the compensation in such case is calculated according to the highest analysis.

17. The margin granted to the seller in an analysis is as follows: 2 per cent. for purity and 4 per cent. for power of germination, or 5 per cent. for pure germinated seeds with at most 2 per cent. for difference of purity. A lesser defect in the power of germination may be compensated by a corresponding higher purity, but not the reverse, unless the difference of purity is of an absolutely harmless character. If the analysis figures of the goods are within this margin, no compensation can be claimed; if the analysis figures exceed the margin, the purchaser is entitled to compensation for the value of the entire difference between the guaranteed figures and the analysis figures of the goods, no notice in this case being taken of the margin.

*Costs.*

18. The costs of estimation and arbitration are in each case fixed by the Committee. For the estimate of quality, undertaken at the request of only one of the parties, 25—50 kroner are charged. For an award on an arbitration the charges are 30—100 kroner, which as a rule are paid by the losing party; but the Committee can according to its own estimate apportion the amount of the costs between the parties.

The fees fixed for awards are paid to the account of the Committee of the Wholesale Dealers' Society, which defrays all the expenses occasioned by the operations of the Committee.

**e) Commercial commission agency.**

We have a case of commercial commission agency, technically speaking, when a person (the principal) authorises, and another person (the commission agent factor) undertakes for the account of the principal, but in the *commission agent's own name*, to conclude with a third person one or several legal transactions appertaining to trade.

The main forms of the contract are *commissions for purchase* and *commissions for sale*, which latter is frequently called consignment.

It is in fact often doubtful whether we have a commission agency properly speaking or the ordinary relation of principal and agent before us, so that the agent is to act in the principal's and not in his own name. When a person carrying on commission business is authorised to carry out a transaction in trade, the presumption is that the person authorised is to act in his own name.

Frequently it is also subject to legal dispute whether goods sent from one trader to another have been sold to the latter or sent to him in consignment. The decision in such cases must rather be based on the available information concerning the real nature of the relation, than on the terminology used at the time when the relation was established. It is preferably assumed that we have a case of sale before us, when the goods have been sent at the risk of the receiver, or when it has been stipulated that the receiver shall pay a certain price for the merchandise without having regard to what he himself is going to get for it. On the other hand, it is presumed that we have a commission transaction before us when stipulations concerning commission have been made, or when the sender has been informed of the accomplished sale. In general it is of course of importance on what understanding the goods have been sent or what stipulations have been made on other occasions, and whether the other party has kept silent as to such understanding. Also the en-

har Brug for, eller at Afsenderen indtil videre har forbeholdt sig Ejendomsret over de hos Modtageren værende Varer, udelukker ikke, at Forholdet kan være Salg. Hvor de oplyste Omstændigheder ikke pege i bestemt Retning, ere Domstolene tilbøjelig til at lægge Konsignationspaastanden til Grund.

Om Kommissions-Kontraktens Stiftelse gælde de almindelige, obligationsretlige Regler. Den kan altsaa indgaas formlost, mundtlig eller skriftlig.

For at Kommittenten kan bindes ved Kommissionærens Retshandler, maa Kommittenten være fuldmyndig. Derimod er det for Kommittentens Erhvervelse eller Forpligtelse gennem Kommissionæren ligegyldigt, om denne er myndig eller ej; men for retsgyldig at kunne paatage sig Forpligtelsen overfor Kommittenten til at udføre Hvervet, maa Kommissionæren være personlig myndig, forsaavidt der kun er Tale om Arbejdsplichter, og fuldmyndig, forsaavidt der tillige er Tale om formueretlige Pligter (jvf. ovf. S. 24).

Naar en Kommissionskontrakt foreligger, ere **Kommissionærens Pligter** navnlig følgende:

Han skal udføre Hvervet med den Omhu, som en ordentlig Mand (efter Omstændighederne en ordentlig Købmand) plejer at udvise. Han skal derved have Kommittentens Interesse for Øje og følge dennes Ordre, medmindre han med Føje kan gaa ud fra, at Kommittenten vilde have ændret dem, hvis han havde vidst, hvorledes Stillingen i Virkeligheden var.

Er der Grund til Tvivl om, hvorvidt og hvorledes Kommittenten ønsker Forretningen udført, skal Kommissionæren saa vidt muligt indhente hans Erklæring.

Kommissionæren er pligtig at handle saa hurtig som muligt og benytte første gunstige Lejlighed. Han maa ikke uden særlig Hjemmel afslutte Retshandlen paa usædvanlig ugunstige Vilkaar. Til at sælge paa Kredit kan han ikke være berettiget, medmindre han har faaet udtrykkelig Tilladelse dertil, eller det kræves af, hvad der er almindelig Skik i Forhold af den Art. Modtagne Konsignationsvarer maa han ordentligvis kun sælge paa det Sted, hvor han driver sin Forretningsvirksomhed.

Kommissionæren maa som Regel være pligtig at udføre Forretningen personlig eller dog i hvert Fald pligtig at lede eller tilse dens Udførelse. Kun i Kraft af særlig Tilladelse eller i Nødsfald kan det være berettiget helt at overlade dens Udførelse til Andre, og han hæfter i saa Fald kun for at have valgt og instrueret behørig.

Den, der som Kommissionær indkøber en Vexel, har i Almindelighed ingen Pligt til selv at endossere den, men, gør han det, maa Endossementet være tegnet paa sædvanlig Maade og uden Forbehold.

Kommissionæren er pligtig hurtigst muligt at give Kommittenten de Meddelelser, som dennes Interesse kræver, og da navnlig om, at Forretningens Udførelse er umulig, eller at den er udført og i saa Fald hvorledes den er udført, hvortil hører Oplysning om, med hvilken Tredjemand Forretningen er indgaaet. Nogen almindelig Forskrift — som i den tyske Handelslovbog — om, at Kommissionæren i Forhold til Kommittenten hæfter for Forretningens Opfyldelse, naar han ikke samtidig med Meddelelsen om Forretningens Afslutning opgiver, med hvem den er afsluttet, findes dog ikke i dansk Ret.

Naar den Retshandel, som Kommissionæren afslutter til Udførelse af Hvervet, i væsentlig Grad afviger fra den beordrede, eller naar Kommissionæren i Tilfælde, hvor det var af væsentlig Betydning for Kommittenten at faa behørig Meddelelse om Forretningens Udførelse, undlader at sende saadan, kan Kommittenten afvise Forretningen som sig uvedkommende, (medmindre da den i god Tro værende Tredjemand ved Kommissionærens Salg er blevet Ejers af Varen, jvf. nærmere ndf.).

tries in the books of the parties may be of importance. The fact of the receiver having reserved for himself the right to return the goods which he cannot dispose of, or which he cannot use, or the circumstance that the sender, until further information is given, has reserved for himself the right of property in the goods remaining with the receiver, does not prevent the transaction from being a sale. Where the available circumstances indicate nothing definite, the tribunals are inclined to presume that they have a case of consignment before them.

The ordinary rules of the law of obligations apply as to the formation of a contract of commission agency. This kind of contract may consequently be concluded in a formless manner, orally or in writing.

In order that the principal may be bound by the legal transactions of the commission agent, the principal must be competent to transact business. On the other hand, as to the rights or liabilities which the principal may acquire or incur through the commission agent, it is immaterial whether the latter is competent to transact business or not; but in order to be able to assume as against the principal the obligation to carry out a transaction, the commission agent must be capable of disposing of his own person in so far as only obligations to do work are concerned, and he must be competent to transact business when pecuniary liabilities are concerned (see above p 24).

When we have a contract of commission agency before us, the obligations of the commission agent are principally the following:

He must carry out his undertaking with the same amount of care as a competent man (according to circumstances a competent trader) is accustomed to show. In executing his commission he must have the principal's interests in view and follow his instructions, unless he is entitled to assume that the principal would have modified them, if he had been aware of the real position of matters.

If there is any reason to doubt whether and how the principal wishes to have a transaction carried out, the agent must as far as possible ask him for his instructions.

The commission agent must act as expeditiously as possible and avail himself of the first favorable opportunity. Without special authorisation he must not conclude legal transactions on unusually unfavorable conditions. He is not entitled to sell on credit, unless he has obtained special permission to do so, or when it is necessary on account of the general custom obtaining in operations of the kind in question. As a general rule he is allowed to sell goods consigned to him for sale, only at the place where his business is established.

The commission agent must, as a general rule, carry out his transactions in person, or at any rate guide or supervise their execution. Only in case of special permission or necessity is he entitled to delegate his authority completely to some other person, and in this case he is only responsible for the choice of the delegate and for the fulness of the instructions he has given him.

A person who in his capacity as a commission agent acquires a bill of exchange, as a general rule is under no obligation to indorse it himself, but if he does, the indorsement must be made in the usual manner and without reservation.

It is incumbent on the commission agent to give the principal that information which the latter's interests require as promptly as possible, and particularly as to whether the execution of the commission is impossible, or whether it has been executed, and in such case how it has been effected, comprising information as to the person with whom the transaction has been concluded. There does not exist in Danish law any general provision — as in the German Commercial Code — to the effect that the commission agent as regards the principal is liable for the fulfilment of the transaction when he does not declare, simultaneously with the sending of the information as to the conclusion of the transaction, with whom it has been concluded.

When the transaction which a commission agent enters into in virtue of the commission, essentially differs from that which he has been instructed to conclude, or when the agent in a case where it was of essential importance for the principal to be sufficiently informed of the execution of the commission, omits to send such information, the principal can refuse to recognise the transaction (except where a *bona fide* third person has become the owner of the merchandise through the transaction of the commission agent: see further details below).

Dersom Forretningens mangelfulde Udførelse eller Undladelsen af behørig Meddelelse skyldes Kommissionærens Brode, kan Kommittenten, hvad enten han afviser eller ikke afviser Forretningen, forlange det ham ved Kommissionærens Brode forvoldte Tab erstattet af Kommissionæren.

Hvad særlig angaar det Tilfælde, at Kommittenten har fastsat en Grænse for det Beløb, for hvilket der maa købes eller sælges (Limitum), skal først bemærkes, at saadant ikke fritager Kommissionæren for at søge og benytte gunstigere Prisforhold til Fordel for Kommittenten. Undlader Kommissionæren dette, kan han derfor blive erstatningspligtig, selv om han ved Retshandlen overholder Limitum. Hvis han paa den anden Side afslutter Handlen paa de gunstigste Vilkaar, der kunde opnaas, men dog afviger fra Limitum, fordi selve dette ikke kunde opnaas, kunde man mene, at Erstatningskrav maatte være udelukket. Imidlertid er der i Praxis selv i saadanne Tilfælde Tilbojelighed til at domme Salgskommissionæren til at tilsvare Limitum, hvilket formentlig kan begrundes derved, at dette er en vedtagen Maalestok for Kommittentens Penge-Interesse i Tingen.

I øvrigt vil, naar Kommissionæren afviger fra Limitum i den for Kommittenten ugunstige Retning, Kommittenten dels ved Salgskommission, naar Køberen har kendt Limitum, dels ved Indkøbskommission kunne afvise Handlen som sig uvedkommende, medmindre Kommissionæren strax tilbyder selv at udrede henholdsvis det manglende eller det overskydende Beløb. Kommittenten maa dog antages pligtig til strax ved Meddelelsen om Forretningens Afslutning og Limitums Ikke-lagttagelse at erklære, at han vil afvise Forretningen, saaledes at han i modsat Fald anses som godkendende den.

Kommittenten kan ved Salgskommissionærens Salg under Limitum ogsaa akceptere Forretningen og gøre Kommissionæren ansvarlig for sit Tab, hvorimod han ved Indkøbskommission med Indkøb over Limitum, og forudsat at Varen ikke har kunnet erholdes billigere, ikke kan tilegne sig den indkøbte Vare uden mod fuldt ud at godkende Forretningen.

Er det Salgskommissionæren tilsendte Gods ved Afleveringen øjensynlig beskadiget eller mangelfuldt, skal Kommissionæren varetage Kommittentens Tarv i Forhold til Fragtforeren (jvf. Solovens § 148), sikre Beviset for Godsets Tilstand og give Kommittenten fornøden Meddelelse. Det kan derhos følge af god Købmandsskik, at Kommissionæren ved Varernes Ankomst bør underkaste dem en vis Undersøgelse, men der kan ikke i Almindelighed paahvile ham den samme Undersøgelsespligt, som paahviler Køber i Forhold til Sælger. I Anledning af enhver forefunden Mangel bør Kommissionæren snarest reklamere. Forsømmelse heraf antages at medføre, at han ikke i Forhold til Kommittenten kan paaberaabe sig Manglen.

Indkøbskommissionæren skal, naar den indkøbte Vare afleveres til ham, varetage Kommittentens Tarv i Forhold til Sælgeren ved samme Forholdsregler, som om han selv var Køber, og give Kommittenten fornøden Meddelelse.

Kommissionæren er pligtig at bevare Kommissionsvaren, saalænge Kommissionsforholdet kræver det. Pligt til at assurere den for Kommittenten antages han kun at have, naar saadant udtrykkelig eller stiltiende er vedtaget eller kræves af særlig Kutyne; men, selv hvor ingen saadan Pligt foreligger, kan der dog efter Omstændighederne være Tale om en Beføjelse dertil. I et Tilfælde, hvor Kommissionæren, der ikke var pligtig at assurere, men efter Kontrakten skulde bære Risikoen for de hos ham beroende Varer, havde assureret disse for egen Regning, er det af Højesteret antaget, at Assurance-summen maatte deles mellem ham og Kommittenten i samme Forhold, hvori Salgsprovenuet skulde have været delt.

Er Varen kommen i en saadan Tilstand, at den ikke kan holde sig længere, maa Kommissionæren, hvis der ikke er Tid til at indhente Kommittentens Instrux, sælge den snarest og bedst muligt. Risikoen for Varens tilfældige Undergang ligger hos Kommittenten, medmindre Undergangen har ramt den i en Situation, der



If the defective execution of the commission or the omission to send sufficient information is due to negligence on the part of the commission agent, the principal, whether he repudiates the transaction or not, can claim damages for the loss brought about by the negligence of the commission agent.

As to the special case where the principal has fixed a limit to the amount for which the agent has to buy or sell (*limitum*), in the first place it must be observed that this does not exonerate the commission agent from seeking and availing himself of still more favorable prices, if they can be obtained, for the benefit of the principal. If the commission agent omits to do so, he may be held liable to pay damages for such omission even when in concluding the transaction he keeps within the limit. If, on the other hand, he concludes the transaction on the most favorable conditions available, but deviates from the limit, because even this could not be attained, one might think that a claim for damages would be out of the question. In practice, however, there is even in such cases a tendency prevailing to consider the selling agent as liable for departing from the limit, a circumstance which presumably can be explained by the fact that it is a measure agreed upon of the principal's pecuniary interest in the object.

Furthermore, when the commission agent deviates from the limit in the direction which is unfavorable to the principal, the principal, both in the case of a selling commission when the purchaser has known the limit, and in the case of a buying commission, is entitled to repudiate the transaction as not concerning him, unless the commission agent immediately offers to defray the deficit or the excess, as the case may be, himself. It is considered, however, that the principal is obliged to declare, immediately on the receipt of the information as to the execution of the commission and the non-observance of the limit, that he intends to repudiate the transaction, and that in the contrary case he is deemed to have accepted it.

The principal, in the case of a selling commission agent concluding a sale below the limit, may also affirm the transaction, and make the agent liable for the loss sustained, whereas in the case of a buying commission, where the purchase has been concluded above the stipulated limit, and provided the merchandise was not obtainable at a lower price, he cannot take possession of the merchandise purchased without fully recognising the transaction.

If on delivery to the selling commission agent it is obvious that the merchandise is damaged or imperfect, the agent must look after the interests of the principal as against the carrier (see the Maritime Law § 148), secure the certificate as to the condition of the merchandise and give the principal any necessary information. Furthermore, it is a consequence arising out of a custom observed by good traders that the commission agent, on the arrival of the merchandise, shall submit it to a certain examination, but in general he is not compelled to examine merchandise to the same extent as is incumbent on a purchaser in his relation with a seller. Concerning any defect found to exist in the merchandise, the commission agent must present his protests forthwith. Any omission to do so results in his losing his right to take advantage of the defect as against the principal.

The commission agent for purchase, when the merchandise bought is delivered to him, has to look after the principal's interests as against the seller, and take the same precautionary steps as he would take if he himself were the purchaser, and give the principal any necessary information.

It is incumbent on the commission agent to take care of the merchandise in commission so long as the contract of agency demands it. It is considered that he is bound to insure the merchandise for the account of the principal only in case such insurance has been expressly or tacitly agreed upon, or when it is required by a special custom; but even where there is no such obligation incumbent on him, there may according to circumstances be a question of his right if he does insure. In a case where the commission agent, who was not bound to insure, but according to the contract was to take the risk in regard to the goods remaining with him, had insured them for his own account, the Supreme Court took the view that the amount of the insurance had to be divided between him and the principal in the same proportion as the proceeds of the sale would have had to be divided.

If the merchandise has arrived in such a state as makes it unsuitable for longer preservation, the commission agent, if he has not sufficient time to ask for the principal's instructions, ought to sell it as soon and as favorably as he can. The principal bears the risk of accidental loss of the merchandise, unless the loss of it has

skyldes ubeføjede egenmægtige Handlinger af Kommissionæren (f. Ex. Forsendelse til et fremmed Sted), thi i saa Fald er Risikoen Kommissionærens.

Salgskommissionæren er ubeføjet til egenmægtig at sende Varen tilbage til Kommittenten.

Kommissionæren er pligtig at aflægge Regnskab til Kommittenten for Kommissionens Udførelse og skal til denne afgive hele Udbyttet af den til Udførelse af Kommissionen foretagne Forretning, dog selvfølgelig kun imod at Kommittenten paa sin Side opfylder de ham ifølge Kommissionskontrakten paa-hvilende Pligter. Er det Penge, Kommissionæren skal aflevere, kan han selv deri afdrage sit forfaldne Tilgodehavende. — Medens man med Hensyn til Varer mener, at Kommissionæren kun er pligtig at afsende disse paa Kommittentens Risiko, er man med Hensyn til Pengeforsendelser fra Kommissionær til Kommittent tilbøjelig til at mene, at disse gaa paa Kommissionærens Risiko. — Erhvervede Forandringsrettigheder skal Kommissionæren paa Forlangende overføre til Kommittenten, dog ikke saa længe han har en ufyldstgjort Sikkerhedsret i dem for sine Udlæg m. v., og ej heller naar der maa antages at være givet Kommissionæren — til Undgaaelse af Forstyrrelser i hans Forretningsvirksomhed og for ikke at svække hans Kredit — en uigenkaldelig Fuldmagt til at besørge deres Inddrivelse, saa længe han er solvent. Dette sidste kan navnlig forekomme, naar Kommissionæren holder fast Udsalg af Kommittentens Varer.

Kommissionæren staar ikke Kommittenten til Ansvar for, at Medkontrahenten behørig opfylder sine Forpligtelser, medmindre det ved Medkontrahentens Misligholdelse fremkaldte Tab maa føres tilbage til en fra Kommissionærens Side udvist Forsømmelighed, eller Kommissionæren staar del eredere. Dette sidste gor han kun, naar der desangaaende foreligger udtrykkelig eller stiltiende Aftale, eller saadan Hæftelse er hjemlet ved Sædvane i den Art Forhold. Den Kommissionær, der staar del credere, hæfter som Selvskyldnerkautionist for Opfyldelsen af Medkontrahentens Forpligtelser, men del eredere Forholdet indvirker i øvrigt ikke paa Retsforholdet mellem Parterne.

Kommissionæren har ordentligvis Krav paa Provision for sit Arbejde ved Kommissionens Udførelse, og denne sættes gerne ved Salgs- og Indkøbskommission i Mangel af anden Aftale eller speciel Sædvane til 2% af Købesummen. Den antages fortjent, saasnart den i Kommission givne Retshandel er afsluttet og vistnok uden Hensyn til, om Kontrakten behørig opfyldes eller ej. I hvert Fald kan Retten til Provisionen ikke fortabes, naar det er Kommittentens egen Skyld, at Kontrakten ikke opfyldes.

Ved Siden af Provisionen kan Kommissionæren af Kommittenten forlange Dækning af alle Udgifter, som han med Foje har afholdt til Kommissionens Udførelse, og kan ordentligvis forlange saadan Dækning, saasnart Udgiften faktisk er afholdt.

Af Forskud og ndlagte Købesummer kan Kommissionæren i Handelsforhold forlange Renter. Salgskommissionærens Forskud antages først at kunne forlanges dækket, naar Købesummen for den solgte Vare er forfalden til Betaling, eller Kommissionensforholdet afsluttet uden Salg.

Endvidere kan Kommissionæren forlange, at Kommittenten selv skal sørge for behørig Opfyldelse af de Forpligtelser, som Kommissionæren med Foje har paataget sig for Kommittentens Regning, uden i Forhold til Kommittenten at have paadraget sig Pligt til foreløbig selv at opfylde dem. Saaledes skal Kommittenten f. Ex. betale den til ham paa Kredit indkøbte Vare eller levere den for ham solgte, og i hans Besiddelse værende Vare.

Hvis Kommissionæren staar del eredere, kan han ordentligvis derfor beregne sig en særlig Provision, gjerne 1%.

Hvad Kommissionærens Sikkerhedsrettigheder angaar, kan først nævnes, at Indkøbskommissionæren i Overensstemmelse med almindelige Regler

been sustained under circumstances brought about by unauthorised and arbitrary acts on the part of the commission agent (for example, his sending the merchandise to a place where it ought not to be sent); in such a case the commission agent takes the risk.

The commission agent for sale is not entitled to return the merchandise to the principal in an arbitrary manner.

It is incumbent on the commission agent to render to the principal an account of the execution of the commission, and to hand over to him the entire proceeds of the business which was done in order to carry out the commission, but of course only on condition that the principal on his part fulfils the obligations which according to the contract of agency are incumbent on him. If it is an amount of money the commission agent has to send, he may himself deduct from it what is due to him. — Whereas with regard to the sending of goods the opinion prevails that the commission agent only has to send these at the risk of the principal, with regard to the sending of money from the commission agent to the principal, the opinion seems to prevail, on the other hand, that such money is sent at the risk of the commission agent. — The commission agent must transfer to his principal on demand such rights of action as he may have acquired, but not so long as he has a right of guarantee in them for expenses incurred, etc., which has not been satisfied, nor where the commission agent may be supposed to have obtained — in order to avoid interruptions of his business operations, and in order not to weaken his credit — an irrevocable authority to carry out the realisation of such rights of action, so long as he is solvent. This latter alternative notably may occur when the commission agent keeps a shop from which he regularly sells the principal's goods.

The commission agent has no liability towards the principal with regard to whether the other contracting party carries out his obligations in due time, unless the loss brought about by the default of the other contracting party must be considered as being due to negligence on the part of the commission agent, or unless he is a *del credere* commission agent. The latter case only obtains when there is an express or tacit agreement to this effect, or when such a guarantee is based on custom obtaining in the kind of relations which are concerned. The *del credere* commission agent is liable as a surety who undertakes a primary liability, with regard to the carrying out of the obligations of the other contracting party, but the relation which is based on the stipulation *del credere* does not otherwise affect the legal relation obtaining between the parties.

The **commission agent** as a rule is entitled to claim **commission** for his work done in the execution of his authority, and in default of other stipulation or special custom, this, in case of selling and buying commissions, is usually estimated at 2 per cent. of the amount of the price. It is considered as being earned as soon as the legal transaction authorised by the commission has been concluded, and, presumably, without taking into consideration whether the contract has been duly carried out or not. At any rate, the right to claim commission is not lost when it is the principal's own fault that the contract has not been carried out.

Besides commission, the commission agent is entitled to claim that the principal shall reimburse all the expenses which he has reasonably defrayed in the execution of the commission, and, as a rule, he is entitled to demand such reimbursement as soon as the expenses have actually been disbursed.

In commercial transactions the commission agent has a right to claim interest on advances and amounts disbursed for purchases. The commission agent for sale is not supposed to be entitled to claim repayment of advances until the price to be paid for the merchandise sold is due for payment, or the contract of commission has been terminated without a sale having been concluded.

Furthermore, the commission agent may claim that the principal himself shall see that the liabilities which the agent has reasonably incurred for the principal's account are duly met without his being obliged, as against the principal, to provisionally meet such liabilities. For example the principal must pay for the merchandise purchased for him on credit, or deliver the merchandise which has been sold for him and which is still in his possession.

If the agent is liable *del credere*, he is entitled, as a rule, for this kind of business to a special commission, usually calculated at 1 per cent.

With regard to the **rights of security** of the agent, it should in the first instance be observed that the buying agent according to the ordinary rules (see above p. 73)

(jvf. ovf. S. 73) maa have Tilbageholdelsesret over den indkøbte Vare for sine af det paagældende Kommissionsforhold udspringende Krav, og, naar Kommittenten ikke behørig fyldestgor disse, kan Kommissionæren i Overensstemmelse med Reglerne om Kreditors Mora (jvf. ovf. S. 63) efter forudgaaet Advarsel realisere Varen og gore sig betalt ved Hjælp af det indvundne.

Hvad Salgskommissionæren angaar, har Praxis indrømmet ham — hvis han er Handlende, — en ligefrem Panteret over de i hans Besiddelse værende Kommissionsvarer, og efter disses Salg i de derved erhvervede Fordringsrettigheder, og det ikke blot til Sikkerhed for de af selve det paagældende Kommissionsforhold udspringende Krav (f. Ex. Forskud paa Købesummen), men ogsaa for andre Krav paa Kommittenten. Skøndt Reglen er udtalt, som om den galdt for alle Krav, maa den dog vistnok forstaas med nogen Begrænsning, og da særlig den, at Situationen maa være saaledes, at den skaber Formodning for, at Parterne under deres Mellemværende have haft en saadan Sikkerhedsrets Opstaaen for Oje.

I Kraft af denne Panteret kan Salgskommissionæren realisere Kommissionsvarerne, men dog først efter at han med passende Varsel forgæves lovligt har af Fordret Kommittenten Fyldestgørelse, med Tilkendegivelse af, at han i Mangel af saadan vil soge Dækning gennem Realisation.

I Kraft af denne sin Beføjelse kan Kommissionæren altsaa under de angivne Betingelser fuldføre Kommissionen uanset Tilbagekaldelser og Ændringer fra Kommittentens Side, eller om fornødent endog realisere uden Hensyn til de fra først af satte Vilkaar, men selvfølgelig skal Realisationen ske paa en Maade, der betrygger, at Varesnes virkelige Værdi udbringes.

Med Hensyn til **Ejendomsretten** over Varerne, medens Kommissionsforholdet bestaar, og **Forholdet til Tredjemand**, skal følgende bemærkes:

Den Kommissionæren til Salg overgivne Vare tilhører fremdeles Kommittenten og vedbliver at gore dette, indtil den enten af Kommissionæren er overdraget til Tredjemand eller Kommissionæren retsgyldig selv er indtraadt som Køber af den. Selv om Salget til Tredjemand er sket i Strid med den Kommissionæren givne Bemyndigelse, f. Ex. under Limitum eller uden Tilladelse paa Kredit, antages Tredjemand, dog at blive Ejer, forudsat at han ved Købets Afslutning var i god Tro og derhos har faaet Varen overleveret.

Kommissionæren maa ifølge Kommissionsforholdets Formaal antages ved Kommissionens Udførelse at erhverve umiddelbart for Kommittenten, medens Kommissionærens Interesser beskyttes ved den ham (jvf. ovf.) indrømmede Sikkerhedsret.

Som Følge af det her anførte tilhører den af Salgskommissionæren for Varen modtagne Købesum Kommittenten, saalænge den er individualiseret. Kommissionæren er dog i Mangel af anden Vedtagelse ikke pligtig at holde den modtagne Købesum individualiseret, og, saasnart den faktisk er blandet med Kommissionærens Pengebeholdning, staar Kommittenten kun med en Fordringsret mod denne.

Er Kommissionæren kommet under Konkurs, og Købesummen indbetales til Konkursboet, tilhører den Kommittenten som Separatist i Boet, saalænge den er individualiseret; men har Boet inddraget den i sin almindelige Pengebeholdning, staar Kommittenten som Massekreditor i Boet.

Saalænge Købesummen endnu ikke er betalt af Køberen, tilhører Retten til den Kommittenten.

Da jo imidlertid Kommissionæren har handlet i eget Navn, maa der tilkomme Køberen de samme Indsigelser mod Kommittenten, som der vilde tilkomme ham, hvis Fordringen var Kommissionærens, og han vil i Almindelighed kunne benytte til Kompensation de Fordringer paa Kommissionæren, som han har erhvervet, inden han erfarede, at Sælgeren kun var Kommissionær.

Fremdeles maa bemærkes, at Kommissionæren, saa længe Køberen ikke veed, at hans Sælger har handlet som Kommissionær, staar som fuldt ud legitimeret

has a right to retain the merchandise purchased, such right being his security for his claims arising out of the contract of commission in question, and, when the principal does not duly satisfy such claims, the agent, according to the rules bearing on the creditor's responsibility for delay (see above p. 63), after having given previous notice, is entitled to realise the merchandise and satisfy his claims out of the proceeds.

With regard to the selling agent, practice has granted him — if he is a trader — nothing less than a pledge-right in respect of the commission goods in his possession, and after the sale thereof, in respect of the rights of action arising from the sale, and not only as a security for the claims resulting from the particular contract of commission in question (as for example an advance given for the price), but also for other claims as against the principal. Although this rule has been formed as if applicable to all claims, it is however most likely correct to understand the rule as being somewhat limited, and notably in regard to circumstances giving rise to a presumption that the parties in their relations have had in view the possibility of a similar right of security coming into existence.

In virtue of this pledge-right the selling commission agent can dispose of the goods entrusted to him, but not, however, until after having given reasonable notice, he has legally called upon the principal in vain to fulfil his obligations, at the same time giving him to understand that in default of such fulfilment, he (the agent) will try to obtain satisfaction by selling the goods.

In virtue of this right the commission agent under the circumstances mentioned can consequently carry out the commission entrusted to him in spite of withdrawal and modifications on the part of the principal, or if necessary even realise the goods without regard to the conditions at first stipulated, but the realisation of the goods must of course take place in a manner guaranteeing that they are sold at their real value.

With regard to the **right of ownership** of the goods so long as the contract of commission lasts, and with regard to the **relations as against third persons**, the following points should be noted.

The merchandise consigned to the agent for sale still belongs to the principal and continues to do so until either it has been delivered to a third person by the agent or the agent himself has legally purchased it. Even if the sale to a third person is contrary to the authorisation given to the agent, for example, when the merchandise is sold below the allowed limit, or is sold on credit although this kind of transaction has not been authorised, the third person is notwithstanding supposed to become proprietor of the merchandise, provided that when the sale in question was concluded, he acted in good faith and, furthermore, has had the merchandise delivered to him.

The commission agent, in virtue of the contract of commission, is considered, in the execution of the commission, to acquire directly for the principal, while the interests of the agent are protected by the rights of security to which he is entitled (see above).

As a consequence arising from what has been stated above, the price received for the merchandise by the agent belongs to the principal so long as it is kept separate. The agent, however, in default of stipulation to the contrary, is not bound to keep the purchase money received separate, and as soon as it has in fact been mixed with other monies which the agent has in hand, the principal has no more than the right of a creditor against him.

If the agent has become bankrupt, and the price has been paid to the bankruptcy estate, the amount belongs to the principal as a privileged creditor of the estate, so long as it is kept separate; but if it has been mixed with the ordinary monies belonging to the estate, the principal becomes an ordinary creditor of the estate.

So long as the price has not been paid by the purchaser, the right thereto belongs to the principal.

If, however, the agent has acted in his own name, the purchaser has the same rights of defence against the principal as he would have had if the claim belonged to the agent, and as a general rule he is permitted to set off such claims against the agent as he acquired before he knew that the seller was only an agent.

Furthermore, it must be observed that the agent, so long as the purchaser does not know that his seller acted as an agent, is fully authorised, as regards the

overfor Køberen til at raade over Fordringen; og, selv efter at Køberen er blevet bekendt med Kommissionsforholdet, maa Kommissionæren dog vedblivende have Beføjelse til at indkræve Fordringen paa almindelig Maade, hvorimod Køberen ikke gyldig kan paaberaabe sig Kommissionærens efter dette Tidspunkt afgivne Eftergivelse.

Videre maa fremhæves, at Kommittentens Rettigheder med Hensyn til Købesummen begrænses af Kommissionærens Sikkerhedsret med Hensyn til samme, hvilken bl. a. kan give ham Ret til at faa Købesummen udbetalt til sig, uanset at Kommittenten ved direkte Henvendelse til Køberen paalægger denne at betale direkte til sig. Køberen, der har handlet med Kommissionæren i dennes eget Navn, og ordentligvis ikke vil kunne vide noget bestemt om Retsforholdet mellem Kommittent og Kommissionær, bør da ogsaa alene betale til denne, og, betaler han uden dennes Samtykke direkte til Kommittenten, bliver han ansvarlig for den Kommissionæren derved retstridig forvoldte Skade.

Det ligger i det anførte, at Kommittenten, for at kunne øve nogen Raadighed over Kravet paa Køberen, maa skaffe sig Legitimation fra Kommissionæren, f. Ex. i den Form, at denne „tiltransporterer“ ham Kravet.

Af det ovenfor anførte følger tillige, at de Indkøbskommissionæren til Indkøb overgivne Penge fremdeles tilhøre Kommittenten, saalænge de endnu ere individualiserede, samt at den ved Kommissionens Udførelse erhvervede Genstand bliver Kommittentens Ejendom i samme Øjeblik, den erhverves af Kommissionæren, dog at der i begge Tilfælde tilkommer Kommissionæren den oftnævnte Sikkerhedsret.

Navnlig i det Tilfælde, at en Indkøbskommissionær for egne Midler eller uden kontant Betaling har gjort et Indkøb, kan det stille sig tvivlsomt, om denne Forretning er den til Udførelse af Kommissionen foretagne eller en lignende, som Kommissionæren har foretaget for egen Regning. Fra Indgaaelse af saadanne egne Retshandler kan Kommissionæren nemlig ikke uden særlig Grund antages afskaaret.

Ved Afgørelsen maa sees hen til, om Forretningen objektivt fremtræder, som om den var foretaget af Kommissionæren i den Hensigt at være en Udførelse af Kommissionen. Særlig Betydning i saa Henseende maa det have, i hvilken Grad den udførte Forretning er konform med den i Kommission givne, hvorledes den er bogført, og hvilke Meddelelser Kommissionæren har gjort Kommittenten.

Har Kommissionæren afsluttet en Købekontrakt til Opfyldelse af Indkøbskommissionen, tilkommer Retten efter denne Kommittenten paa samme Maade som ovf. med Hensyn til Retten til Købesummen ved Salgskommission omtalt, hvoraf bl. a. fremgaar, at det er Kommissionæren alene, der staar som den, der i Forhold til Medkontrahenten er legitimeret til at raade over Fordringen.

Hvad angaar de Forpligtelser, som Kommissionæren ved Kommissionens Udførelse indgaar overfor Tredjemand, da hvile disse som Følge af Kommissionærens Optræden i eget Navn, paa Kommissionæren, og kun paa denne. Tredjemand kan ikke, efter at være kommet til Kundskab om Kommissionsforholdet, alene under Paaberaabelse af dette, holde sig direkte til Kommittenten. Imidlertid vil der ordentligvis tilkomme Kommissionæren et Krav mod Kommittenten paa at blive holdt skadesløs for de Forpligtelser, som Kommissionæren for Kommittentens Regning, har paataget sig overfor Tredjemand, og da dette Krav, saalænge Kommissionæren ikke har fyldstgjort Tredjemand, kun er et Krav paa at faae det til Dækning af Tredjemand fornødne, men ikke paa at faae en Ydelse til Forøgelse af egen Formue, er man tilbøjelig til at antage, at Tredjemand, naar Kommissionæren er kommen under Konkurs, kan forlange, at Konkursboet skal overdrage ham Kommissionærens omtalte Dækningskrav hos Kommittenten, eller hvis Konkursboet selv har indkasseret Beløbet hos Kommittenten, kan forlange det afgivet til sig og ikke behøver at nøjes med Dividende. Derimod maa Tredjemand nøjes med Dividende, hvis Dækningskravet for Konkursen er indkasseret af Kommissionæren.

purchaser, to assign the claim; and even after the purchaser has acquired knowledge of the contract of commission, the agent has always the right to realise the claim in the ordinary manner, whereas the purchaser cannot after acquiring such knowledge legally take advantage of any reduction granted by the agent.

Further, it must be pointed out that the principal's rights with regard to the price are limited by the rights of security of the agent with regard to the same, which *inter alia* may entitle him to have the price paid to himself, even when the principal by applying to the purchaser direct, requests him to pay direct to himself. The purchaser, if he has negotiated with the agent in his own name, and does not know anything definite about the legal relation obtaining between the principal and the agent, is also bound to make payment only to the latter, and if he makes payment direct to the principal without having the agent's consent to do so, he becomes responsible for the loss sustained by the agent owing to his unlawful mode of making payment.

It results from the foregoing remarks that the principal, in order to be able to dispose of his claim on the purchaser, must obtain an authorisation from the agent, for example, to the effect that the latter "transfers" the claim to him.

From the above remarks it also results that the money sent to the buying agent with a view to concluding purchases, belongs to the principal as long as it is kept separate, and that the object obtained when the commission is effected becomes the principal's property immediately it is acquired by the agent; in both cases, however, the agent is entitled to the right of security mentioned.

It should especially be noted that, in the case of a buying agent having concluded a purchase by means of his own money or without payment in cash, it may be doubtful whether such transaction is the one which he has been authorised to conclude, or a similar transaction which he has concluded for his own account. For the agent, it is supposed, cannot without special reason be prevented from concluding such legal transactions on his own account.

When deciding this question, it is necessary to consider whether the transaction presents itself objectively as if it had been concluded by the commission agent with a view to carrying out the commission entrusted to him. It is of special importance in this connection to what extent the business done corresponds to the instructions given, how it has been booked, and what information the commission agent has sent to the principal.

If the commission agent has concluded a contract of purchase with a view to carrying out the buying commission entrusted to him, the rights arising out of the purchase belong to the principal in a similar manner as mentioned above with regard to the right to the price in the case of an order to sell: it results from this *inter alia*, that the commission agent, as regards the other contracting party, is alone authorised to dispose of the claim.

As to the liabilities incurred by the commission agent with regard to third persons when carrying out the commission given to him, such liabilities, owing to the fact that the commission agent has acted in his own name, are at his charge, and at his only. Third persons who, knowing of the agency relationship, cannot by reason of such relationship only look to the principal personally for settlement. As a rule, however, the commission agent as against the principal is entitled to be indemnified against those liabilities which he has incurred for the account of the principal as regards third persons, and as such a right, so long as the commission agent has not satisfied third persons, only consists in a claim to obtain the amount necessary for the payment of the third persons, but not to obtain a performance augmenting his own capital, the opinion prevails that third persons, when the agent has become bankrupt, are entitled to claim that the bankruptcy estate shall transfer to them the claim of the agent as against the principal to obtain from him the amount necessary for their payment, or, if the bankruptcy estate itself has realised such amount from the principal, to claim that this shall be handed over to them, and that they need not be satisfied with receiving a dividend only. On the other hand, third persons must be content with receiving a dividend if, before becoming bankrupt, the commission agent has himself obtained from his principal the amount necessary for the payment of third persons.

Endvidere antages i Konsekvens af det anførte, at Kommittenten, hvis han ellers Intet skylder til Kommissionæren, kan frigøre sig for Kommissionærens Dækningskrav ved, om han ønsker det, at betale direkte til Tredjemand, naar denne er villig til at modtage Betalingen.

**Ophør.** Kommissionsforholdet bringes til Ophør efter de almindelige Regler om Kontraktens Ophør. Særlig skal kun nævnes, at Kommissionæren maa kunne fordrø Forholdet opløst, naar han i en rimelig Tid forgæves har bestræbt sig for udføre Kommissionen.

Ved Forholdets Ophør maa Salgskommissionæren stille de usolgte Kommissionsvarer til Kommittentens Disposition og eventuelt gaa frem efter Reglerne om Kreditors Mera.

**Selvindtrædelse.** Det antages almindeligt i Danmark, at Kommissionæren i alle Tilfælde, hvor ikke særlige Grunde medføre andet, er befojet til selv at indtræde som Sælger eller Kober overfor Kommittenten, og der opstilles desangaaende følgende Regler:

Kommissionæren er kun befojet til at indtræde paa de Vilkaar, der stemme med hans sædvanlige Pligter som Kommissionær. Han maa efter almindelige Regler staa til Ansvar for, hvad der ligger forud for hans Indtrædelse i Forholdet, og maa ved selve Indtrædelsen have varetaget Kommittentens Interesser som ordentlig Kobmand. Saasnart Selvindtrædelsen er sket, skal han give Kommittenten Meddelelse om, at Forretningen er udført, hvorimod han ikke strax behøver at meddele, at den er udført ved Selvindtræden. Den almindelige Provision antages at tilkomme Kommissionæren, (men ikke Deleredere-Provision og vistnok heller ikke Godtgørelse for „de ved Kommissionens Udførelse med Tredjemand regelmæssige Udlæg“). Selvindtrædelse kan finde Sted, saa længe Ordren ikke er tilbagekaldt af Kommittenten. Ret til at behandles som selvindtraadt har Kommissionæren først fra det Tidspunkt, da han til Kommittenten har afsendt Meddelelse om Kommissionens Udførelse eller i øvrigt har gjort sin Selvindtræden objektivt kendelig; indtil da maa Kommittenten kunne udelukke Selvindtræden ved Tilbagekaldelse. Paa den anden Side erhverver Kommittenten ordentligvis først Ret til at behandle Kommissionæren som selvindtraadt, naar dennes Meddelelse om Forretningens Udførelse er kommet til ham, eller naar Kommissionæren faktisk har tilegnet sig den ham til Salg overgivne Vare.

## f) Spedition.

Særlige Lovregler om Spedition findes ikke i dansk Ret, og altsaa heller ikke nogen legal Afgrænsning mellem Spedition og Befragtning.

Almindeligvis vil man ved Spedition forstaa: erhvervsmæssig Besorgelse af Vareforsendelse i eget Navn for andres Regning (altsaa som Kommissionær), og saaledes at Speditoren gerne hovedsagelig benytter fremmede Transportmidler til Transporten i Modsætning til Fragtføreren, der gerne hovedsagelig benytter egne Transportmidler dertil; men nogen skarp Adskillelse i saa Henseende findes ikke.

Spedition maa bedømmes efter dansk Rets almindelige Regler om Kommission og Værksleje.

Speditoren er pligtig ved Forsendelsens Udførelse, derunder ved Valget af Fragtfører, at udvise den for den ordentlige Forretningsmand sædvanlige Omhu; han skal have Forsenderens Interesse for Øje og saa vidt muligt følge dennes Anvisninger.

Nogen til t. Hlb. § 408, 2 St. svarende Regel findes ikke, og der er altsaa Intet til Hinder for, at Speditoren, naar ikke særlige Aftaler eller Forudsætninger udelukke det, beregner Forsenderen en højere Fragt end den, han selv betaler.

Speditoren antages ordentligvis ikke at kunne fordrø sin Provision og sine Omkostninger betalt, før Godset er afleveret der, hvor han har forpligtet sig til



Furthermore, as a consequence of what has been said above, the principal, if he does not owe the commission agent anything else, is considered to have a right to obtain a discharge with regard to the commission agent's claim on him as to the amount necessary for the payment of third persons, by paying the third persons direct if he desires to do so, when they are willing to receive such payment.

**Termination of agency.** The relation between the principal and the commission agent is brought to an end according to the ordinary rules with regard to the termination of contracts. We will only point out that the commission agent is entitled to demand the termination of the contract when after a reasonable lapse of time he has tried in vain to carry out the commission entrusted to him.

When the contract is terminated, the commission agent for sale must place the goods entrusted to him which are not sold at the principal's disposal, and eventually proceed according to the rules obtaining with regard to a creditor's responsibility for delay.

**Self-substitution.** It is in Denmark generally admitted that the commission agent, in all cases where there are no special reasons to the contrary, is himself entitled to become a seller or a buyer as regards the principal, and in this regard the following rules obtain.

The commission agent is entitled to substitute himself only on those conditions which are in harmony with his ordinary obligations as a commission agent. According to the ordinary rules he is responsible for liabilities incurred previously to his entering into the relation with the principal, and immediately on entering into this relation, he must have taken charge of the principal's interests like a regular trader. As soon as the self-substitution has taken place, the commission agent must inform the principal that the business has been done, but it is not necessary that he should at once send information of the fact that it has been done by way of self-substitution. It is supposed that the usual commission is due to the agent (but not *del credere* commission and presumably no indemnity for "the regular expenses incurred by carrying out the commission as regards third persons"). Self-substitution may take place as long as the commission has not been withdrawn by the principal. The commission agent has a right to be treated as self-substituted only from the moment at which he has informed the principal that the order given has been carried out, or has otherwise made his substitution known in a conspicuous manner; until then the principal is entitled to exclude self-substitution by means of a revocation. On the other hand, the principal as a general rule does not acquire the right to regard the commission agent as self-substituted, until he has received information from him to the effect that the business has been done, or until the commission agent has in fact appropriated the merchandise consigned to him for sale.

### f) Forwarding agency.

There are no special legal rules bearing on forwarding agency in Danish law, nor is there owing to this fact any legal demarcation between forwarding agency and affreightment.

As a general rule forwarding agency is understood to be: to carry on as a trade the forwarding of goods in one's own name for the account of another person (consequently as a commission agent), and so that the forwarding agent will in the main use means of transport not belonging to himself for the despatch of goods, in contrast to the carrier who ordinarily uses his own means of transport for such purpose; but there is no rigorous distinction in this respect.

Forwarding agency according to Danish law must be judged according to the general rules applicable to commission agency and the hire of work.

It is incumbent on the forwarding agent when forwarding goods, and more particularly when choosing a carrier, to exercise the same care as a reasonably careful business man is in the habit of exercising; it is his duty to keep the sender's interests in view, and as far as possible to follow his instructions.

There is no rule available corresponding to Art. 408, 2nd par. of the German Commercial Code, and therefore, when no special stipulations or suppositions exclude such a course, nothing prevents the forwarding agent from charging the sender a higher freight than that which he pays himself.

The forwarding agent is not, as a general rule, supposed to be entitled to demand that his commission and expenses shall be paid until the merchandise has been

at aflevere det. I Reglen vil han indkræve det gennem Efterkrav. Har Godset passeret flere Speditorer, vil Eftermanden gerne have at gøre Forgængerens Krav gældende, saaledes at Varen ankommer til Bestemmelsesstedet, belastet med samtlige Forsendelsesomkostninger.

Det ligger i det Anførte, at Speditorens Krav ordentligvis er betinget af, at Varerne føres frem som aftalt, saaledes at han intet Krav har, naar Transporten ikke gennemføres, selv om dette er Speditoren utilregneligt; men Undtagelse herfra maa dog i hvert Fald gælde, naar Hindringen maa føres tilbage til en Fejl fra For-senderens Side eller overhovedet til et Forhold, for hvilket Ansaret maa være hans, saaledes f. Ex. naar Hindringen beror paa, at Varerne havde andre Egenskaber end i Speditionskontrakten forudsat.

Til Sikkerhed for sit Krav paa Vederlag og Godtgørelse af Udgifter har Speditoren Tilbageholdelsesret (jvf. ovf. S. 73) i de ham til Forsendelse overgivne Ting, forsaavidt de i Henhold til Kontrakten ere i hans Besiddelse. Derimod er der ikke tillagt ham nogen lovbestemt Panteret.

Der kan Intet være til Hinder for, at Speditoren helt eller delvis selv udfører Forsendelsen ved egne Folk og egne Transportmidler.

Særlige Forældelsesregler vedrørende Erstatningskrav mod Speditoren i Anledning af Godsets Beskadigelse eller for sildige Aflevering findes ikke i dansk Lovgivning.

### g) Lagerforretning.

En Lov af 23 Febr. 1866 om Oplagshuse bestemmer, at Justitsministeriet kan meddele Interessentskaber eller Enkeltmand, der agter at oprette Oplagshuse, Bevilling til at udfærdige Beviser for Varernes Modtagelse (Oplagsbeviser) paa særegne dertil indrettede Blanketter med den Virkning, at de oplagte Varer ikke kunne afhændes eller pantsættes uden gennem en Overdragelse eller Pantsætning af selve Beviset. Loven har imidlertid været saa godt som uden direkte Betydning, og der er for Tiden Ingen, der har nogen saadan Bevilling. Endvidere har Lov Nr. 34 af 30 Marts 1894 givet en indgaaende Række Regler om Oplagsbeviser og Garantibeviser (Warrants) for Varer, der oplægges i Kjøbenhavns Frihavn (Dobbeltbevis-Systemet). Dog have heller ikke disse Beviser fundet praktisk Anvendelse i Forretningslivet. Ordentligvis oplægges Varerne mod ikke-negotiable Modtagelsesbeviser, og Udlevering af Varen finder Sted dels mod Tilbagelevering af det kvitterede Modtagelsesbevis, dels i Henhold til Udleveringssedler fra Oplæggeren eller den, der bevislig er traadt i hans Sted (se Reglement for Driften af Kjøbenhavns Frihavn af 19 Oktober 1894 med Tillæg).

Lagerforretning vil derfor i Hovedsagen være undergivet dansk Obligationsrets almindelige Regler om Forvaring (Depositum).

Modtagerens Forvaringspligt gaar herefter ud paa at forvare det Modtagne, som en ordentlig Forretningsmand, hvis Næringsdrift helt eller delvis gaar ud paa saadan Opbevaring, plejer at opbevare saadanne Ting, og Modtageren bliver ansvarlig for Tingens Undergang eller Forringelse, naar han ved en retsstridig og tilregnelig eller ved en i hans økonomiske Forhold grundet Tilsidesættelse af denne hans Pligt har bevirket Skaden.

Udenfor disse Grænser er det Forvaringsgiveren selv, der bærer Risikoen ved Godsets Undergang eller Forringelse. Nogen Assurancepligt kan næppe paahvile Forvareren, hvor ikke særlig Hjemmel derfor kan paavises.

Ret til at frigøre sig for sin Forvaringspligt maa Forvareren have, naar det vedtagne eller forudsatte Tidspunkt for Tingens Aflevering er kommet, eller, hvis saadan Tidsgrænse ikke foreligger, naar han med passende Varsel har meddelt Forvaringsgiveren, at han ikke længere vil beholde Tingen.

delivered at the place where he has undertaken to deliver it. Ordinarily he obtains payment of such amounts by way of re-imbursement. If the merchandise has been in the hands of several forwarding agents, the successor is bound to present the claims of his predecessor, and consequently when the merchandise arrives at the place of destination, it is burdened with all the costs of the forwarding.

It results from what has just been said that the claim of the forwarding agent as a general rule is based on the condition that the goods are carried to the place agreed upon, and consequently he can advance no claim in case the transport of the object in question is not carried out, even if the forwarding agent is not to blame for this; an exception from this rule, however, obtains, for example, in a case where the obstacle to the forwarding can be traced back to an error on the part of the sender, or in general to a circumstance for which the latter is responsible, and especially when the obstacle is due to the fact that the goods in question had qualities differing from those stipulated in the forwarding contract.

As security for his claim to indemnity and the recovery of expenses incurred, the forwarding agent has a right of retention (see above p. 73) of the objects entrusted to him for forwarding, provided that according to the contract they are in his possession. On the other hand, he is not entitled to a legal pledge-right.

Nothing prevents the forwarding agent from carrying out the forwarding in its entirety or in part by the aid of his own employees or means of transport.

No special rules of prescription concerning damages against the forwarding agent in respect of deterioration or delay in delivery of goods exist in Danish law.

### g) Warehousing.

An Act of 23rd Feb. 1866 concerning warehouses provides that the Ministry of Justice may grant associations and single individuals intending to carry on warehousing businesses, permission to issue certificates for the reception of goods (warehouse certificates) on forms specially established for this purpose, to the effect that the warehoused goods cannot be disposed of or pledged without the certificate itself being transferred or pledged. The Act, however, has had very little result in a direct manner, and at the present moment no one has such a permission. Furthermore, the Act No. 34 of 30th March 1894 provides an important series of rules concerning warehouse certificates and guarantees (warrants) for goods warehoused at the Free Harbour of Copenhagen (the system of double certificates). These certificates have not, however, been made use of in practical business life. Usually goods are warehoused against non-negotiable *receipts*, and the delivery of the goods takes place partly against the return of the signed receipts, partly according to *delivery orders* issued by the depositors or by those who can be proved to have taken their place (see the regulations for the administration of the Free Harbour of Copenhagen of 19th October 1894, with Supplement).

The warehousing business is therefore in the main subject to the general rules of the Danish law of obligations concerning the safe keeping of deposited objects (*depositum*).

The obligation of the depositary in regard to the object deposited with him imports that he shall take charge of such object as a careful business man whose trade entirely or partially involves the looking after of objects entrusted to his care, who is accustomed to take charge of such objects, and the depositary is responsible for the loss or deterioration of the objects in his charge if he has caused the loss or damage by unlawful or blameworthy proceedings, or by neglect of the obligations arising from his economic situation.

Outside these limits the depositor himself bears all the risks connected with the loss or deterioration of the deposited object. An obligation to insure is hardly incumbent on the person who takes charge of an object for another person, where it cannot be proved that there has been a stipulation for such insurance.

The depositary of an object has a right to obtain a discharge from his obligation to keep it, when the stipulated or foreseen time for the delivery of the object has arrived, or, if no such time has been fixed, when after having given reasonable notice to this effect, he has informed the depositor that he is unwilling to keep the object any longer.

Er Forvaringsgiveren herefter kommen i Mora med at modtage Tingen, kan Forvareren efter de almindelige Regler om Kreditors Mora omsætte Tingen i Penge.

Forvareren har Krav paa det aftalte eller forudsatte Vederlag; men dette maa normalt antages bl. a. at skulle dække de forudselige Bekostninger ved Tingens Opbevaring, saaledes at disse ikke kunne forlanges særlig godtgjorte. Hvad uforudselige Udgifter angaar, da vil Forvareren ordentligvis kun kunne forlange saadanne dækkede af Forvaringsgiveren, naar han enten i Tide har indhentet dennes Bemyndigelse til at afholde dem eller, hvis der ikke har været Tid eller Lejlighed dertil, Udgifterne dog maatte anses for nødvendige, og det i det Hele maatte anses stemmende med fornuftig Handlemaade at afholde dem som sket.

For unødvendige Udgifter vil der ordentligvis ikke tilkomme Forvareren noget Godtgorelseskrav, selv om de forhoje det deponeredes Værdi. Derimod vil Forvareren efter almindelige Erstatningsregler kunne forlange Godtgørelse for uforudselig Skade, som den deponerede Ting har forvoldt ham.

Retten til Vederlaget m. m. haves mod Forvaringsgiveren, selv om det er aftalt, at Tingen skal tilbagegives til en Tredjemand. Men, dersom Forvareren kun maa aflevere Tingen til Tredjemand mod at skaffe sig Vederlaget betalt af denne, kan han tabe sit Krav mod Forvaringsgiveren ved at aflevere Tingen til Tredjemand uden at sørge for at faae Vederlaget. Paa den anden Side maa den Tredjemand, der modtager Tingen, efter at det er tilkendegivet ham, at han skal betale Vederlaget, blive pligtig at udrede dette.

Til Sikkerhed for sine fornævnte Krav har Forvareren Tilbageholdelsesret i den forvarede Ting (jvf. ovf. S. 73).

Oplagsbeviser, som udstedes i Henhold til de to fornævnte Love, skulle stemples ved Oprettelsen, men kunne transporteres stempelfrit.

Om andre Oplagsbeviser gælder det, at de ere stempelfri, naar det for Opbevaringen betingede Vederlag ikke overstiger 1000 Kr. (Lov 21 Marts 1874, § 2). Ellers ere de stempelplichtige fra først af saavel som ved Transport, hvilket atter medfører, at de i saa Fald hverken maa udstedes til Ihændehaveren eller transporteres til Ihændehaveren eller in blanco.

Oplagsbeviser saavel som Udleveringssedler, der lyde paa at effektueres af Udstederen selv, følge Reglerne om negotiable Dokumenter, forsaavidt de angaa fungible Ting og ere af en saadan Art, at den almindelige Opfattelse er paa det rene med, at de benyttes i Omsætningen ligesom Gældsbreve, men ellers ikke. Hvis Dokumentet indeholder Bemærkning om, at Varen ogsaa udleveres imod Udleveringsseddel fra Oplæggeren uden at afskrives paa Oplagsbeviset, maa Negotiabilitet dermed være udelukket.

Forsaavidt Oplagsbeviset efter det anførte maa anses for negotiabelt, maa den Del af de i Loven af 1866 indeholdte Regler, der tage Sigte paa Negotiabiliteten, analogisk finde Anvendelse. Saaledes Reglen i § 1, hvorefter de oplagte Varer ikke kunne aflændes eller pantsættes undtagen igennem en Overdragelse eller Pantsætning af Beviset selv, og ej heller gores til Genstand for Arrest, Beslag eller Exekution, uden igennem en Forfølgning mod Beviset. § 4, hvor det hedder: Bestyrelsen af Oplagshusene maa under Ansvar til vedkommende Skadelidende alene udlevere de i samme oplagte Varer imod Tilbagelevering af de for Varerne udfærdigede Oplagsbeviser i behørig kvitteret Stand. Den er kun forpligtet til at udlevere Varerne imod Betaling af Pakhusleje, Udgifter for Losning samt andre paa deres Transport eller Bevaring af Bestyrelsen lovlig anvendte Udgifter. Samt § 6, hvor det hedder:

Oplagsbeviser kunne gives saavel til haandfaaet Pant som til Underpant. Dog kunne de deraf flydende Rettigheder ikke gores gældende mod den, som paa lovlig Maade har faaet Beviset overdraget til Ejendom eller Pant, medmindre der er givet Beviset en Paategning, der tydeligt indeholder, at det er Genstand for den

If the depositor, after having received such notice, unduly delays the reception of the object, the depositary, according to the rules bearing on the creditor's rights in case of delay, may convert the object into money.

The depositary can claim the stipulated or implied remuneration for his service; but normally it is considered that the remuneration includes, for example, the anticipated charges for the keeping of the object, so that no special claim can be advanced in regard to these. As to unforeseen expenses, the depositary is as a general rule entitled to recover these from the depositor, when either he has obtained authorisation to defray them in due time, or, if neither time nor opportunity has been available for obtaining the authorisation, in case the expenses are considered necessary, and when, in general, it is considered as being in accordance with good reason that they should have been so defrayed under the circumstances.

The depositary, as a general rule, is not entitled to claim indemnity in respect of unnecessary expenses incurred, even when they increase the value of the object deposited. On the other hand, according to the ordinary rules as to compensation for damage, the depositary may claim compensation for such unforeseen damage as the deposited object may have caused him.

The claim to indemnity etc. can be advanced against the depositor even when it has been stipulated that the object deposited shall be returned to a third person. But if the depositary is to deliver the object to a third person only against obtaining from him the indemnity due, he may lose his right to claim the same as against the depositor by delivering the object to the third person without at the same time seeing that he obtains the indemnity. On the other hand, a third person receiving an object after having been informed that he is to pay the indemnity, becomes liable for payment thereof.

As security for his claims previously mentioned the depositary has a right of retention of the deposited object (see above p. 73).

*Warehouse certificates issued according to the two Acts mentioned above*, have to be stamped when issued, but they need not be stamped when transferred.

As to *other kinds of warehouse certificates*, it is admitted that they are free of stamp duty when the charge stipulated for the keeping of the object does not exceed 1000 kroner (Act of 21st March 1874 § 2). Otherwise, they are subject to stamp duty when they are first issued as well as when they are transferred, which implies that in such case they must neither be issued to bearer nor transferred to bearer or in blank.

Warehouse certificates, as well as *delivery orders* purporting to be effectuated by the issuer himself, are subject to the rules affecting negotiable instruments in so far as they concern fungible objects and are of such a character that, according to general opinion, they are used for the purpose of business transactions as valuable securities, but otherwise not. If the document in question imports that the merchandise is to be delivered against the delivery order of the depositor, without being recorded on the warehouse certificate, it is considered as a matter of course that the document is not negotiable.

In so far as the warehouse certificate, according to what has been said, is considered negotiable, that portion of the rules contained in the Act of 1866 relative to negotiability has an analogous application. This is so with regard to the rule of § 1, which provides that the warehoused goods cannot be disposed of or pledged except by way of transferring or pledging the certificate itself, nor can such goods be the subject of arrest, seizure or execution except in an action brought against the certificate itself. Also § 4 which provides: The administration of the warehouse may not, without incurring responsibility to the persons interested who may sustain loss, deliver goods warehoused with them except against the return of the warehouse certificates issued for the goods, and such certificates must then be duly signed. The administration is only obliged to deliver the goods against the payment of the warehouse rent, expenses for unloading and other expenses legally disbursed by the administration itself for the transport or the preservation of the goods. Also the rule of § 6 which says:

Warehouse certificates may either be pledged or hypothecated. However, the rights arising from such transactions cannot be taken advantage of as against persons who in a legal manner have had the certificates transferred to them in ownership or by way of pledge, unless it has been distinctly stated on the certificates that

tidligere Pantsætning. Det samme gælder om tingløste Forfølgninger, som ere overgaaede Ihændeheren af Oplagsbeviset.

## h) Befragtning.

Ved Godsfragtkontrakten forstaas Kontrakten om Transport af en i den Transporterendes Varetagt værende Ting.

Forsaauidt Søbefragtning angaar, henvises til den nordiske Solovs Kap. V.

Transporten paa ferske Vande (Indsøer, Floder, Aar), er i Danmark uden nævneværdig Betydning og har ikke fremkaldt særlige Regler.

Heller ikke om den Landtransport, der foregaar paa anden Maade end ved Jærnbane, er der — bortset fra Reglerne i Postlov af 5 Apr. 1888, der i sin ved Tillægslove ændrede Skikkelse findes optaget i Bkg. af 3 Juni 1902, jvf. Tillægslove 2. Aug. 1907 og 12 Juni 1908 og Anordning om Posternes Benyttelse af 19 Sept. 1902 med Tillæg — givet særlige Lovregler, men Kontrakten maa være undergivet Obligationsrettens almindelige Regler om Værksleje med de Modifikationer, der følge af Kontraktens Ejendommeligheder.

Fragtførerens Pligt gaar ud paa behørig at modtage, drage Omsorg for, transportere og aflevere Fragtgodset. Da Hovedpligten er et Resultats Tilvejebringelse, vil der ordentligvis tilkomme Fragtføreren en ret udstrakt Frihed til at vælge Midler og Forholdsregler til Resultatets Opnaaelse. Fragtføreren skal i Mangel af modstaaende gyldige Ordre aflevere Godset til den behørig legitimerede Destinatar paa Bestemmelsesstedet i rette Tid. Fragtføreren er dog kun pligtig at aflevere imod Betaling af Fragt og andre Omkostninger, som hvile paa Godset; undertiden vil det endog være hans Pligt kun at aflevere mod Betaling. Befragterens ændrede Ordre angaaende Afleveringen er — medmindre Befragteren mangler fornøden Legitimation — Fragtføreren pligtig at følge, forsaavidt de ikke paalægge ham anden Ulempe, Besvær eller Udgift end den ved Kontrakten hjemlede.

Fragtføreren er ansvarlig for den Ikke-Opfyldelse, der skyldes hans Brøde (forsætlig eller uagtsomme retstridige Handlemaade) eller hans økonomiske Forhold eller de af ham antagne Medhjælperes Brøde, og det maa, naar Godset, medens det var under hans Varetagt, er blevet beskadiget eller er forkommet, være hans Sag at antageliggøre, at Skaden eller Tabet ikke hidrøre fra Forhold, for hvilke han efter det nysanførte staar til Ansvar.

Fragtføreren maa ordentligvis bære alle Transportudgifter fra Godsets Modtagelse til dets Aflevering paa Bestemmelsesstedet, medmindre Andet følger af Skik og Brug eller særlig Aftale.

Befragterens Hovedpligt gaar ud paa, at han skal betale Vederlaget for Transporten, der i Mangel af anden Aftale om dets Størrelse maa fastsættes i Overensstemmelse med den ved Afsendelsestiden paa Afsendelsesstedet sædvanlige Fragt. Fragten maa antages tilsagt som Vederlag for Transportens Gennemførelse, og kan derfor ikke forlanges, naar Varen ikke føres frem, medmindre da dette skyldes dens egen Beskaffenhed eller Befragterens Forhold. Forudbetalt Fragt maa under samme Betingelse kunne forlanges tilbage. Er Varen fort frem en Del af Vejen til et Sted, hvorfra Videreforsendelse billigere kan ske, maa Fragtføreren kunne forlange Distancefragt.

Befragteren maa godtgøre Fragtføreren Udlæg for Omkostninger paa Godset, som denne ikke er pligtig at bære f. Ex. Toldudlæg, og der kan tilkomme Fragtføreren Godtgørelse for Bitjenester, som ikke omfattes af Fragtkontrakten.

Befragteren er pligtig at erstatte Fragtføreren Skade, som tilføjes denne ved mangelfulde eller urigtige Angivelser angaaende Varen og ved Undladelse af i øvrigt at forsyne denne med behørig Oplysninger og Dokumenter.

Fragtføreren har for sine Krav Sikkerhedsret i Godset, idet han ikke behøver at slippe dette, før han faar Betaling.

they are subject to the consequences of a previous pledge. The same rule applies to actions proclaimed in public to which the bearer of a warehouse certificate may have been subjected.

### h) The carrying trade.

The contract of carriage of goods is a contract for the transport of objects entrusted to the carrier's care.

In so far as carriage by sea is concerned, we refer to Chapter V of the Scandinavian Maritime Law.

Transport on fresh waters (lakes, rivers, streamlets) is in Denmark of no importance worth mentioning and has not occasioned any special rules.

Nor have special legal rules been laid down with regard to transport by land effected otherwise than by railway — except the rules of the Post Act of 5th April 1888 which, as altered by supplementary Acts, is included in the Ordinance of 3rd June 1902; see supplementary Acts of 2nd August 1907 and 12th June 1908 and the Regulation concerning the postal traffic of 19th September 1902, with supplement — but contracts dealing with transport by land are subject to the general rules of the law of obligations concerning the hiring of work (services), with the modifications arising from the peculiarities of such contracts.

The carrier has to duly receive, take care of, transport and deliver the carried merchandise. The main obligation being to obtain a certain result, the carrier as a general rule has a very wide liberty as to the choice of means and measures of precaution to be taken in bringing about such result. The carrier, in default of valid instructions to the contrary, must deliver the merchandise to the duly authorised consignee at the place of destination and within reasonable time. The carrier, however, is only bound to deliver the merchandise against the payment of carriage and other expenses affecting it; sometimes even it may be his duty only to deliver against such payment. The carrier must follow the modified instructions of the consignor concerning the delivery — except where the consignor has insufficient authority — in so far as such instructions do not cause him inconvenience, trouble or expense other than as stipulated in the contract. The carrier is responsible for non-obedience to instructions due to default on his part (deliberate or careless improper conduct) or to his economic situation or to default on the part of his auxiliary employees, and, when the merchandise has been damaged or lost while in his charge, it is incumbent on him to establish that such damage or loss has not resulted from circumstances for which according to what has just been said he is responsible.

The carrier, as a general rule, must defray all the transport expenses incurred from the moment he received the merchandise until the delivery of the same at the place of destination, in the absence of any custom or usage or special agreement to the contrary.

The main obligation of the consignor is that he must defray the expense of the carriage, which, in default of other stipulation as to its amount, must be fixed according to the ordinary tariff obtaining at the place of consignment at the time when the merchandise in question is despatched. The freight is considered as promised in payment for carrying out the transport, and, consequently, is not due when the merchandise is not brought to its place of destination, unless the omission has been caused by the nature of the merchandise or some act on the part of the consignor. Freight paid in advance is on the same conditions subject to repayment. If the merchandise has been carried part of the way to a place from which further transport can be effected at a cheaper rate, the carrier is entitled to claim the freight according to distance.

The consignor is bound to reimburse the carrier such expenses disbursed by him for the merchandise as he is not liable to defray, as, for example, customs duties, and the carrier may be entitled to claim payment for auxiliary services rendered which were not mentioned in the contract of carriage.

The consignor is liable to indemnify the carrier against damage incurred by the latter owing to incomplete or incorrect declarations concerning the merchandise, or owing to the fact that he omits to procure the carrier the necessary information and documents.

The carrier for his claims has a *right of security* over the merchandise, to the effect that he need not part with it until he has received his stipulated payment.

Fragtførerens Pligt kan bortfalde efter de almindelige Regler om Umulighed (jvf. ovf. S. 58) saavel som i Tilfælde af væsentlig Misligholdelse fra Befragterens Side.

Befragteren paa sin Side kan hæve Kontrakten paa Grund af væsentlige Mangler ved Opfyldelsen fra Fragtførerens Side og mulig ogsaa paa Grund af Kendsgærringer, der gore Transporten væsentlig farefuldere end paaregnet, eller som væsentlig forringe Udsigten til, at den vil blive behørig besorget.

Vil Befragteren derimod vilkaarlig træde tilbage, maa han betale fuld Fragt, efter Omstændighederne med Tillæg af visse Godtgørelsesbeløb, men paa den anden Side med Fradrag af, hvad Fragtføreren vinder ved at slippe for Transporten. Det samme maa vistnok gælde, hvor Varen inden Afleveringen til Fragtføreren tilfældig er gaaet tilgrunde.

Naar Varen ikke leveres Fragtføreren i rette Tid, uden at det er tilkendegivet ham, at den ikke vil blive leveret, vil der dog kunne være Spørgsmaal om en Pligt for ham til at vente en vis Tid saavel som om en Ret for ham til at vente mod særlig Godtgørelse for Opholdet. Naar Fragtføreren ikke eller ikke længere er pligtig at vente, kan han behandle Befragteren, som om denne vilkaarlig var traadt tilbage.

Naar Godset efter dets Ankomst til Bestemmelsesstedet ikke bliver aftaget i rette Tid, kan der ligeledes være Spørgsmaal om Pligt eller Ret til at afvente en vis Tids Forløb, inden videre foretages, men derefter vil Fragtføreren være beføjet og efter Omstændighederne pligtig at oplægge (eller om fornødent sælge) Varen for Befragterens Regning.

Hvor Destinataren er en fra Befragteren forskellig Person, er han, i Mangel af modstaaende Ordre fra Befragteren, legitimeret til efter Varens Ankomst til Bestemmelsesstedet at gore de ved Fragtkontrakten hjemlede Rettigheder mod Fragtføreren gældende og da navnlig til, imod at erlægge, hvad der efter Fragtkontrakten skal erlægges, at afkræve Fragtføreren Godset. Denne maa paa den anden Side blive frigjort ved i god Tro at udlevere Godset til Modtageren paa Bestemmelsesstedet. Hvis inidlertid Legitimationspapir er udstedt til Befragteren, er dettes Forevisning ordentligvis Betingelse for Godsets Udlevering.

Naar en Transport sukkessivt skal besorges af flere Fragtførere, er der, og da navnlig naar Godset gaar med samme Fragtbrev gennem de flere Fragtføreres Hænder, en Tilbøjelighed til at antage, at hver Enkelt maa hæfte fuldt ud for hele Transporten. Mellemværendet mellem de flere Fragtførere maa saa udjævnes ved Regres mod den, indenfor hvis Omraade Skaden er sket.

Alle de her opstillede Regler ere for Søbefragtnings og Jærnbanebefragtnings Vedkommende dels nærmere specificerede, dels modificerede ved de positive Regler, der gælde for disse Befragtningsarter.

## Den danske Konkursret.

### Inledning.

Den gældende danske Konkurslov af 25 Marts 1872, der afløste Lov om Behandlingen af Fallitboer af 30 December 1858, er den første danske egentlige Kodifikation vedrørende Konkursforholdet. Den har nærmest benyttet den norske Konkurslov af 1863 som Forbillede, hvilken Lov atter er stærkt paavirket af den preussiske Konkurslov af 1855 og derigennem indirekte af den franske Konkurslov af 1838. For flere Bestemmelser om Akkord i den danske Konkurslov har den østrigske Konkurslov af 1868 tjent som Forbillede.



The obligation of the carrier may become void according to the ordinary rules concerning impossibility (see above p. 58), as well as in case of an essential violation of the contract on the part of the consignor.

The consignor, on his side, is entitled to cancel the contract owing to essential default in the execution thereof on the part of the carrier, and possibly also on account of circumstances rendering the transport much more dangerous than anticipated, or diminishing in a high degree the chance of having the transport duly effected.

If, on the other hand, the consignor wishes to withdraw arbitrarily from the contract, he must pay the freight in full, with an extra payment of certain amounts for compensation, according to circumstances, but at the same time a deduction is made in respect of what the carrier gains in consequence of not effecting the stipulated transport. The same rule also obtains when the merchandise, before its delivery to the carrier, has been accidentally lost.

In case the merchandise is not delivered to the carrier in due time, and he has not been informed that it will not be delivered as stipulated, there may be a question as to an obligation for him to wait for the merchandise for a certain time, and also as to a right for him to wait subject to the payment of special damages for the delay. When the carrier is not or is no longer compelled to wait, he may treat the consignor as having arbitrarily withdrawn from the contract.

When the merchandise, after its arrival at the place of destination, is not taken away in due time, there may also be a question as to an obligation or right to wait for a certain time until something further is done, but after such time the carrier is entitled, and according to circumstances compelled, to warehouse (or if necessary to sell) the merchandise for the account of the consignor.

Where the consignee is a person different from the consignor, he is, in default of any instructions from the consignor to the contrary, when the merchandise has arrived at the place of destination, entitled to take advantage of the rights arising from the contract of carriage as against the carrier, and in particular to require the carrier to deliver the merchandise against payment being made of the amount due to him according to the contract. The carrier, on the other hand, is entitled to be discharged from his obligation by handing over the merchandise in good faith to the consignee at the place of destination. If, however, a certificate of authorisation has been issued to the consignor, the presentation of such document is as a general rule a necessary preliminary to the delivery of the merchandise.

If the transport is to be effected by several carriers in succession, there is, particularly when the merchandise has to pass through the hands of the various carriers under the same way bill, a certain tendency prevailing to assume that each of them is fully liable for the entire transport. A settlement between the various carriers is eventually brought about by means of a claim of recourse being advanced against the carrier within whose district the damage has occurred.

All the rules here stated, so far as carriage by sea and by railway are concerned, have partly been specified in detail and partly been modified, by the positive rules which apply to these kinds of transport.

## The Danish Law of Bankruptcy.

### Introduction.

The Danish Bankruptcy Act now in force, enacted on the 25th March 1872, which superseded the Act regarding the administration of bankruptcy estates of 30th December 1858, is the first real Danish codification bearing on bankruptcy. In the first place it is based on the Norwegian Bankruptcy Act of 1863 as a model, which again was strongly influenced by the Prussian Bankruptcy Law of 1855 and indirectly through this by the French Bankruptcy Law of 1838. The Austrian Bankruptcy Law of 1868 has served as a model for various provisions of the Danish Bankruptcy Act dealing with composition.

Af den danske Konkurslovs tre Afsnit omhandler kun det første Konkursvæsnets, medens det andet giver nogle Bestemmelser af almindelig Karakter om Pant m. m., og det tredje indeholder nogle Forandringer i de gældende Bestemmelser om Eksekution og Arrest paa Person. Imidlertid er første Afsnit langt det største og rummer 150 af Lovens 170 Paragraffer.

Idet Konkursloven saaledes indeholder en udførlig systematisk Ordning af Konkursvæsnets, har den vel saa vidt muligt holdt sig til det historisk givne Grundlag, men dog paa mange Punkter indført betydningsfulde nye Regler overensstemmende med Grundsætningerne i Udlandets Konkurslove. Herhen høre saaledes Bestemmelser om lettere Adgang for Kreditorerne til at erklære Skyldneren fallit, om Kreditorernes større Indflydelse paa Boets Behandling, om udvidet Adgang til at afkræfte Skyldnerens for Konkursen indgaaede Retshandler, om Tvangsakkord og om Afskaffelse af Proklamaets præklusive Virkning.

Hvad særlig Konkursboets Bestyrelse angaar, er Ordningen efter Konkursloven af 1872 den, at Boet i Reglen bestyres af en af Kreditorerne valgt Kurator i Forbindelse med et Kreditorudvalg (Kap. 9), medens de vigtigste Spørgsmaal ere henviste til Afgørelse i Skiftesamlinger, hvortil alle Kreditorer indkaldes (Kap. 8). Fallenten har ingen Stemme med Hensyn til Boets Behandling, og Skifterettens Virksomhed er nærmest begrænset til den formelle Ledelse af Skiftesamlinger og Afgørelsen af Retsspørgsmaal.

Følgende Bestemmelser i Konkursloven af 1872 ere ændrede ved senere Love:

- § 21 ved Lov Nr. 30 af 20 Marts 1901;
- § 23 ved Lov Nr. 30 af 20 Marts 1901;
- § 30 ved Lov Nr. 30 af 20 Marts 1901;
- § 37 ved Lov Nr. 66 af 15 April 1887;
- § 50 ved Lov Nr. 66 af 15 April 1887;
- § 100 ved Lov af 14 April 1905 § 39;
- § 130 ved Lov Nr. 66 af 15 April 1887;
- § 131 ved Lov Nr. 66 af 15 April 1887;
- § 164 ved Lov Nr. 160 af 18 December 1897.
- § 165 ved Lov Nr. 38 af 28 Februar 1908.

Blandt de Punkter, der siden Konkurslovens Ikrafttræden især have været Genstand for Kritik, uden at det dog er lykkedes at faae dem ændrede, maa særlig nævnes den overvejende Indflydelse paa Boets Bestyrelse, der er indrommet de mange Smaakreditorer fremfor de enkelte store Kreditorer.

Den almindelige borgerlige Straffelov indeholder følgende Straffebestemmelser vedrørende Fallenter:

§ 260. Naar nogen, efter at hans Bo er taget under Behandling som fallit, eller paa en Tid, da han maatte forudse sin forestaaende Fallit, i egenlystigt Hensigt foretager noget, der gaar ud paa, at Boets lovlige Ejendele eller Fordringer ikke komme samme tilgode, eller at urigtige Fordringer paa Boet gøres gældende, eller naar nogen til den sidstnævnte Tid i lige Hensigt optager nye Forstrækninger, anses han med Strafarbejde indtil 6 Aar eller med Fængsel paa Vand og Brod, ikke under 2 Gange 5 Dage.

261. Den, som til et af de ovennævnte Tidspunkter foretager Handlinger, ved hvilke han, dog uden derved at søge egen Fordel, retstridig begunstiger enkelte Kreditorer paa andres Bekostning, saasom ved at foretage Afhændelser mod et uforholdsmæssigt ringe Vederlag, ved at benytte, hvad han har under Hænder, til fortrinsvis at betale enkelte Kreditorer, eller ved at udstede Dokumenter, som under Fallitten skulde give enkelte Kreditorer Fortrin fremfor de øvrige, straffes med Fængsel paa Vand og Brod eller under formildende Omstændigheder med simpelt Fængsel, dog ikke under 1 Maaned.

262. Befindes det, at nogen, som er pligtig til at føre Handelsbøger, og hvis Bo er kommen under Fallitbehandling, har forvansket, bortskaffet eller tilintetgjort disse Bøger eller har ført dem paa en uredelig Maade eller i svingagtig Hensigt

Out of the three sections of the Danish Bankruptcy Act, only the first deals with bankruptcy, whereas the second contains some provisions of a general character concerning pledge, etc., and the third provides some modifications of the provisions in force in regard to execution and arrest of the person. The first section, however, is by far the largest and comprises 150 of the 170 Articles of the Act.

The Bankruptcy Act, consequently, contains a complete and systematic exposition of matters connected with bankruptcy, and has, as far as possible, limited itself to the available historical bases; however on many points it has introduced important new rules in harmony with the principles of foreign bankruptcy laws. Amongst these are the provisions granting greater facilities for the creditors to declare a debtor bankrupt, greater power for the creditors to influence the administration of the assets of the estate, greater facilities for contesting the legal transactions concluded by the debtor before he has become bankrupt, and also provisions bearing on composition and concerning the abolition of the preclusive effect of proclamation.

As regards more particularly the administration of the bankruptcy estate, the Bankruptcy Act of 1872 provides that, as a rule, the estate has to be administered by a trustee chosen by the creditors, in conjunction with a committee chosen from amongst the creditors (Chap. 9), whereas the most important questions are referred for decision to meetings to which all the creditors are summoned (Chap. 8). The bankrupt himself has no voice as to the administration of the assets, and the operations of the Bankruptcy Court mostly bear on the formal guidance of the meetings of the creditors and the decision of legal questions.

The following provisions of the Bankruptcy Act of 1872 have been altered by later Acts:

- § 21 by Act No. 30 of 20 March 1901;
- § 23 by Act No. 30 of 20 March 1901;
- § 30 by Act No. 30 of 20 March 1901;
- § 37 by Act No. 66 of 15 April 1887;
- § 50 by Act No. 66 of 15 April 1887;
- § 100 by Act of 14 April 1905, § 39;
- § 130 by Act No. 66 of 15 April 1887;
- § 131 by Act No. 66 of 15 April 1887;
- § 164 by Act No. 160 of 18 December 1897;
- § 165 by Act No. 38 of 28 February 1908.

Amongst the points which, since the enactment of the Bankruptcy Act, have especially been subject to criticism, which, however, has not resulted in alterations, should especially be mentioned the predominant influence on the administration of the bankruptcy granted to the many small creditors in preference to individual large creditors.

The general *Civil Penal Code* contains the following provisions *as to the punishment of bankrupts*:

§ 260. If any person, on his assets having been referred to the administration of the Bankruptcy Court, or at a time when he could not avoid foreseeing that his bankruptcy was imminent, in a selfish manner does anything with a view to preventing his estate from benefiting by its legal assets and claims or with a view to advancing unfounded claims against his estate, or if any person during the last mentioned period with a similar object in view contracts new loans, he is subject to a punishment of 6 years' hard labour as a maximum, or imprisonment on bread and water for not less than twice 5 days.

261. The person who, during one of the above mentioned periods, does acts, not with the object of benefiting himself personally, but to favour one or more of his creditors in an unlawful manner to the detriment of others, as, for example, by disposing of assets in consideration of an exceedingly small payment, by using assets which he has in hand to pay some creditors in preference to others, or by issuing documents calculated to give individual creditors during the bankruptcy a preference to others, is subject to punishment by imprisonment on bread and water, or, in case of extenuating circumstances, by simple imprisonment for not less than one month.

262. If it is found that any person on whom it is incumbent to keep commercial books, and whose estate is in the hands of the Bankruptcy Court, has falsified, removed or destroyed such books, or has kept them in a dishonest manner, or with

undladt at fore dem, straffes han med Fængsel paa Vand og Brød eller med Forbedringshusarbejde indtil 2 Aar.

Har Fallenten gjort sig skyldig i grove Uordener i Henseende til Førelsen af sine Handelsbøger, bliver han at straffe med simpelt Fængsel indtil 6 Maaneder.

263. Naar nogen, hvis Bo er kommen under Fallithandling, befindes ved odsel Levemaade, ved højt Spil, ved vovelige Foretagender, der ikke staa i Forhold til hans Formue, eller ved anden saadan letsindig Adfærd at have paaført sine Kreditorer betydelige Tab, bliver han, naar nogen af Boets Kreditorer derpaa andrager, at straffe med Fængsel.

Om de Retter, ved hvilke Konkursboer behandles, skal kortelig følgende bemærkes.

1. I Kjøbenhavn er Landsover- samt Hof- og Stadsrettens Skiftekommision den almindelige Skifteret. Den bestaar ifølge Lov 23 Januar 1862 af tre Medlemmer, valgte for fire Aar af og blandt den nævnte Rets Dommere. Hvert Medlem behandler i Lobet af de 4 Aar en forholdsmæssig Del af de i dette Tidsrum forefaldende nye Boer; efter Udlobet af denne Tid har han kun at tilendebringe de af ham paa-begyndte Skifter. Medens hvert Medlem i øvrigt behandler de ham tilfaldende Boer alene, deltage de dog alle tre i Kendelser og Decisioner.

2. I Købstæderne dannes Skifteretten normalt af den almindelige Underdommer („Byfogden“) alene. Kun i nogle enkelte Købstæder, i hvilke der tillige findes en særlig kongelig udnævnt Borgmester, er denne med til at danne Skifteretten.

3. Paa Landet dannes Skifteretten paa hvert Sted alene af den i vedkommende Jurisdiktion ansatte Underdommer („Herredsfoged“ eller „Birkedommer“).

4. De under 1—3 nævnte Skifteretter ere de almindelige, ved hvilke alle Konkursboer i Mangel af særlig Hjemmel for andet og uden Hensyn til deres Beskaffenhed behandles.

Afgørelsen af, under hvilken af de forskellige sideordnede Skifteretter et Konkursbo henhører, træffes i Henhold til Reglen i Fdg. 21 Juni 1793 (jvf. Skiftelov 30 November 1874 § 87), hvor det hedder, at Skifter saavel i Dods-som i Fallittilfælde skulle holdes af Skifteretten paa det Sted, hvor den, efter hvem der skiftes, havde sit personlige Værneting paa den Tid, Skiftet begynder (hvilket vil sige der, hvor han havde Bopæl eller i Mangel af Bopæl Ophold).

En særlig Regel gælder dog om Skifter efter Personer, der høre til danske Gesandtskaber i Udlandet, Fdg. 30 Maj 1827, hvorhos Skiftelovens § 87 bestemmer, at Justitsministeriet, naar en Dansk, der ikke har Bopæl her i Landet, er død i Udlandet, og man ikke der skifter efter ham, kan henvise Behandlingen af hans Bo til en dansk Skifteret.

Udenfor de saaledes anførte Tilfælde ere de danske Skifteretter ikke kompetente til at behandle Boer, henhørende til Personer, der havde eller have fast Bopæl i Udlandet.

Af specielle Skifteretter til Behandling af visse Arter af Konkursboer findes i Danmark kun en, nemlig den københavnske Sø- og Handelsrets Skifteretsafdeling, der behandler Handlendes, Fabrikanters og Skibsrederes Boer, der i Kjøbenhavn tages under Behandling efter Konkursloven (jvf. Konkurslovens § 149 og Anordning 19 Juli 1872). I hvert Bo fungere to af Rettens handelskyndige Medlemmer i Forbindelse med Formanden eller Næstformanden.

5. Extraordinære Skifteretter („Kommissarier“), særlig beskikkede til Behandling af enkelte, bestemte Boer, vare tidligere ikke ualmindelige, men benyttes, siden Konkursloven af 1872 er traadt i Kraft, saa godt som ikke; dog giver Konkurslovens § 147 Kongen en vis Ret til under ganske særlige Betingelser at

a fraudulent object in view has omitted to keep them, he is subject to punishment by imprisonment on bread and water, or detention in a house of correction, for not exceeding two years.

If the bankrupt has been guilty of serious irregularities with regard to the keeping of his books, he is subject to be punished with simple imprisonment for not exceeding six months.

**263.** Any person whose estate is administered by the Bankruptcy Court, and who, owing to wasteful living, hazardous games, fool-hardy enterprises which are out of proportion to his means, or other thoughtless conduct, is found to have caused his creditors considerable loss, is, if any of the creditors of his estate demands such a course, punished by imprisonment.

As to the *tribunals dealing with bankruptcy estates*, we will make the following short remarks.

1. *In Copenhagen* the Distribution Committee of the Superior Regional Tribunal and Court and Town Tribunal operates as the general Bankruptcy Court. According to the Act of 23 January 1862 this Committee consists of three members chosen for four years by and from the judges of the said Tribunal. During these four years each member deals with a proportionate part of the new estates administrated in course of this period; after the expiration of this period, he has only to complete the administration of the estates submitted to him. Whereas each member in general only deals with the estates allotted to him, all the three members, however, take part in judgments and decisions.

2. *In the other towns* the Distribution Tribunal as a general rule consists of the ordinary local judge alone ("the Bailiff"). Only in a few provincial towns, in which there is also a burgomaster specially appointed to the King, this magistrate is part of the Distribution Tribunal.

3. In the rural districts the Distribution Tribunal of every district consists of the local judge appointed to the particular jurisdiction alone ("the bailiff of the district or "the judge of the Birk").

4. The Distribution Tribunals mentioned under Nos. 1—3, are the *ordinary* ones, before which, in default of special provisions to the contrary, and without regard to their nature, all bankruptcy estates are dealt with.

The decision as to which of the various co-ordinate Distribution Tribunals is to deal with a bankruptcy estate, is given according to the rule contained in the Ordinance of 21 June 1793 (see the Act of 30 November 1874, § 87, dealing with the division of inheritances and bankrupts' estates), which provides that the division of the assets, both in the case of inheritances and of bankruptcy estates, has to be undertaken by the Distribution Tribunal operating at the place where the person, whose assets are being distributed, personally had his jurisdiction at the time when the distribution was commenced (that is to say, where he had his domicile or, in default of domicile, was living).

A special rule, however, obtains in regard to the distribution of assets of persons belonging to Danish embassies abroad: see the Ordinance of 30 May 1827; furthermore the Distributions Act, § 87 provides that the Ministry of Justice, when a Dane who is not domiciled in this country has died in a foreign country, and when no distribution of his assets has taken place there, may order the administration of his estate to be undertaken by a Danish Distribution Tribunal.

Except in the case mentioned, Danish Distribution Tribunals are not competent to administer estates belonging to persons who had or have a fixed residence abroad.

Of special Distribution Tribunals dealing with certain kinds of bankruptcy estates there is in Denmark only one, viz., the Distribution Department of the Maritime and Commercial Court of Copenhagen, which deals with the estates of traders, manufacturers and managing ship-owners; such estates are in Copenhagen dealt with according to the Bankruptcy Act (see the Bankruptcy Act, § 149 and the Ordinance of 19 July 1872). The liquidation of these estates is conducted by two commercial experts of the Court, in conjunction with the president and the vice-president.

5. *Extraordinary Distribution Tribunals* ("Commissaries"), specially instituted for the liquidation of particular estates, were in the past not unusual, but, since the enactment of the Bankruptcy Act of 1872, hardly ever operate; § 147 of the Bankruptcy Act, however, provides that the King, under very special circumstances,

beskikke saadanne, ligesom Sparekasselov 28 Maj 1880 § 8 giver Adgang til at beskikke dem til Behandling af en Sparekasses Konkursbo.

6. Skifteretternes Handlinger, Beslutninger og Kendelser staa under Appel til højere Ret, jvf. i saa Henseende nærmere § 94 og Kap. 15.

## Lov af 25 Marts 1872 om Konkurs samt om nogle Forandringer i de gjældende Bestemmelser om Pant og Exekution.

Vi Christian den Niende, af Guds Naade Konge til Danmark osv. gjøre vitterligt: Rigsdagen har vedtaget og Vi ved Vort Samtykke stadfæstet følgende Lov:

### Første Afsnit. Om Konkurs.

#### I. Om Konkursens retlige Virkninger.

##### Kapitel I. Hvad der bliver at inddrage under Konkursbehandlingen.

Art. 1. Alt, hvad der i det Oieblik, Konkursen tager sin Begyndelse (§ 50)-henhører til Skyldnerens Formue, saavel som Alt, hvad der under Konkursen tilfalder ham, begge Dele med Undtagelse af de Gjenstande, der ifølge privat Villies, erklæring, Lov eller anden særlig Hjemmel ere udelukkede fra Exekution, unddrages, med de af de følgende Bestemmelser i dette Kapitel flydende Begrænsninger<sup>1)</sup>, Skyldnerens Raadighed for igjennem Konkursbehandlingen at anvendes til Fyldestgørelse for dem, der ved Konkursens Begyndelse havde Fordringer paa ham.

2. Fra det Oieblik, Konkursen tager sin Begyndelse, kan Trediemand ikke ved Retshandler med Skyldneren erhverve nogen Rettighed imod eller Befrielse i Forhold til Konkursboet. Dog gjælder dette ikke om den Trediemand, som i god Tro har handlet med Skyldneren, forinden offentlig Bekjendtgørelse i Aviserne om Konkursen er sket, ligesom Konkursbehandlingen ei heller kan paaberaabes overfor den Trediemand, der i god Tro har indladt sig i Retshandler med Skyldneren om dennes faste Eiendomme, saalænge ikke Thinglæsning angaaende den begyndte Konkurs har fundet Sted ved den Jurisdiktion, hvorunder Eiendommene ere beliggende.

3. Arv, som under Konkursen maatte tilfalde Skyldneren, kan Boet tiltræde, dog at Arveboet behandles af Skifteretten, saaledes at Gjældsansvar undgaas, ligesom ogsaa Legater og Gaver, som tilfalde Skyldneren under Konkursen, høre til Boet, Alt dog kun, forsaavidt ikke retsgyldige Bestemmelser af Arveladeren eller Giveren ere til Hinder derfor.

Hvad Skyldneren under Konkursen erhverver ved Ægteskab, kan Boet ikkun tilegne sig imod at overtage den Gjæld, vedkommende Ægtefælle ved Ægteskabets Indgaaelse maatte have.

4. Komme Penge, Varer, Konnossementer, Vexler og Deslige, som ere afsendte til Skyldneren, saaledes at han for Erhvervelsen skal yde Vederlag, Boet tilhænde, efterat det er taget under Konkursbehandling, kan Boet — selv om Skyldneren

<sup>1)</sup> Jvf. herved særlig §§ 3—5.

*ad § 1 og 2.* Skyldneren bliver ikke ved Konkursen umyndiggjort, men han bliver uraadig med Hensyn til alt, hvad der inddrages under Konkursen, og hans Adfærd eller Forhold efter Konkursens Begyndelse kan overhovedet ikke paadrage Boet nogen Forpligtelse.

*ad § 4.* Reglen antages at maatte forstås saaledes, at Boet, naar det først har erhvervet Ejendomsret over de paagældende Ting efter Konkursens Indtræden, saavel som naar Fallenten ved Konkursens Indtræden kun havde erhvervet en af Køesummens Betaling betinget Ejendomsret, ikke kan tilegne sig det tilsendte, uden at udrede Vederlaget i Overensstemmelse med Kontrakten, hvori imod Boet, naar ubetinget Ejendomsret alt var erhvervet inden Konkursen, kan tilegne sig det tilsendte, der ankommer efter Konkursens Begyndelse, uden at behøve at præstere Vederlaget fuldt ud. Jvf. dog herved dels Solovens § 166, dels nu § 39 i Lov af 6 Apr. 1906 om Køb.

may establish such Courts, and the Savings Banks Act of 28 May 1880 in § 8 provides that they may be instituted to conduct the liquidation of the bankruptcy estates of savings banks.

6. The acts, resolutions and decisions of the Distribution Tribunals are subject to appeal to higher Tribunals: see on this subject the details in § 94 and Chapter 15.

## **The Act of 25 March 1872 on Bankruptcy with some modifications in the rules applicable to Pledge and Execution.**

We, Christian the Ninth, by the Grace of God King of Denmark etc., make known: The Rigsdag has enacted and We by Our consent have confirmed the following Law:

### **First Section. Bankruptcy.**

#### **I. The legal consequences of bankruptcy.**

##### **Chapter I. The subject matter of bankruptcy proceedings.**

**Art. 1.** All that which, at the time when the bankruptcy commences (§ 50), belongs to the debtor's fortune, as well as all that which during the bankruptcy accrues to him, in both cases with the exception of such objects as according to a declaration of a private desire or the law, or for some other special reason, are excluded from execution, is, subject to the limitations<sup>1)</sup> resulting from the succeeding rules of this Chapter, withdrawn from the debtor's control in order to be disposed of in the course of the liquidation of the bankruptcy estate, towards the payment of all those who at the commencement of the bankruptcy had claims on him.

2. From the time at which the bankruptcy proceedings commence, third persons cannot in virtue of legal transactions concluded with the debtor, acquire any right or discharge as against the bankruptcy estate. This rule, however, does not apply to third persons who have in good faith negotiated with the debtor before the bankruptcy was made known to the public in the newspapers, nor can the proceedings of the bankruptcy be invoked against third persons who have in good faith concluded legal transactions with the debtor in regard to his real estate so long as a public proclamation concerning the opening of the bankruptcy proceedings has not been made in the jurisdiction where the real estate is situated.

3. The bankruptcy estate can enter upon an inheritance which, during the liquidation of his assets, may accrue to the debtor, but such inheritance is administered by the Distribution Tribunal, in order to avoid its being encumbered with debts; also bequests and donations accruing to the debtor during the bankruptcy proceedings belong to his estate, in so far as valid stipulations on the part of the testator or donor do not prevent this being the case.

That which the debtor during the liquidation of his assets acquires through marriage, his estate can only take possession of, upon taking at its charge such debts as the consort in question is bound by at the time when the marriage is celebrated.

4. If a debtor's estate, after he has become bankrupt, comes into possession of money, goods, bills of lading, bills of exchange, etc., which have been sent to the debtor on condition that he should make a payment when acquiring them, his estate

<sup>1)</sup> See, in this respect, especially §§ 3—5.

*As to § 1 and 2.* The debtor is not on account of the bankruptcy declared incapable of managing his affairs, but his control is suspended with regard to all property which is subject to liquidation through the Bankruptcy Court, and his conduct or proceedings after the moment he has been declared bankrupt do not as a rule entail any obligation on the part of the bankruptcy estate.

*As to § 4.* The assumption is that the rule has to be understood to the effect that the estate, in case it has not acquired the proprietary right to the object in question until after the commencement of the bankruptcy, as well as when the debtor at the time when he became bankrupt had acquired the proprietary right only on condition that the price should be paid, cannot take possession of the object sent, without making payment according to the contract, whereas his estate, when an unconditional proprietary right had already been acquired before the commencement of the bankruptcy may take possession of the object sent, if it arrives after the commencement of the bankruptcy, without being compelled to pay the equivalent in full. See, further, in this matter § 166 of the Maritime Law and § 39 of the Purchase and Sale Act of 6 April 1906.

ikke alt tidligere havde erhvervet Eiendomsret derover — indtræde i Erhvervelsen, hvis det vil udrede Vederlaget, hvortil selvfølgelig horer, at dette erlægges i rette Tid.

5. Hvad Skyldneren under Konkursen erhverver ved sin egen Virksomhed, er Boet nvedkommende. Til saadant Erhverv henregnes dog ikke, hvad der tilfalder Skyldneren som Lotterigevinst eller paa lignende tilfældig Maade.

6. Hvad der tilhører Trediemand eller af anden saadan Grund ikke kan indtages i Konkursmassen, bliver at afsondre fra denne og udlevere til rette Vedkommende.

Dog bliver det at iagttage, at, dersom Skyldneren eller Boet har Tilbageholdelsesret over de paagjældende Gjenstande, maa Vedkommende, naar han vil opnaa Udlevering, holde Boet skadeslost for dets Krav.

## Kapitel II. Om Konkursens Indflydelse med Hensyn til Retsforfølgning imod Skyldneren eller Forfølgning af hans Rettigheder imod Andre.

7. Efter Konkursens Begyndelse blive alle Fordringer paa Boet eller Gjenstande, som hore dertil, at rette imod dette<sup>1)</sup>. Dog kan Retssag ogsaa anlægges imod Skyldneren, naar Hensigten med samme kun er at opnaa Dom over ham personlig.

8. Hvis Retssag inden Konkursens Begyndelse er anlagt imod Skyldneren, kan den fortsættes ved den Ret, hvor den lovligen er begyndt, men fra Konkursens Begyndelse gaar den over paa Boet i den Stand, hvori den befinder sig.

9. Retssager, ved hvilke Skyldneren søges til at foretage eller undlade Noget, som ikke vedkommer den under Konkursbehandlingen hørende Formue, saavel som Retssager, der angaa Retsforhold, som staa udenfor Konkursen, anlægges imod Skyldneren uden Hensyn til den indtraadte Konkurs.

10. Ved Konkursens Indtrædelse taber Arrest, som maatte være gjort i de under Konkursbehandlingen hørende Formuesgjenstande, sin Virkning, ligesom ogsaa al Adgang til at gjøre Arrest i dem saavel som til at søge Fyldestgjørelse i dem gennem Eksekution og Tvangsauktion falder bort.

Dog fortabes ikke Retten til ifølge Udlæg, opnaaet forend Konkursens Begyndelse, at søge Fyldestgjørelse i det Udlagte uden Hensyn til Konkursen, ligesom ogsaa den, der inden Konkursens Begyndelse har faaet Afsætning, uanset Konkursen bevarer sin Ret til i sin Tid at faae Udlæg og derefter søge Fyldestgjørelse i det afsatte Gods, jfr. dog §§ 23 og 158.

11. I de Retssager, som maatte være anlagte af Skyldneren forend Konkursen, er Boet berettiget til at indtræde i Skyldnerens Sted, forsaavidt Sagens Gjenstand efter sin Beskaffenhed hen horer til Konkursmassen.

12. En Fordrings Anmeldelse i Boet har samme Virkninger med Hensyn til Forhalingsrenter, Afbrydelse af Hævd m. m. som Retssags Anlæg.

De af selve Retsforholdet flydende Renter vedblive at løbe, indtil Fordringen ved Udlodningen i det Hele eller for en Del betaales.

<sup>1)</sup> Altsaa selv den, der f. Ex. mener at have Ejendomsret over en i Boets Besiddelse varende Ting, maa processuelt rette sit Krav til Boet og underkaste sig Skifterettens Afgørelse. Det samme gælder saa meget mere om „Massekreditorer“ (jvf. § 31b. og Højesteretsdom af 18 Febr. 1890).

ad § 6. Til dem, der som „Separatister“ ere berettigede til af visse Bogenstande at erholde Fyldestgjørelse af samme Art, af samme Størrelse og til samme Tid, som om Konkursen ikke fandt Sted, og uafhængigt af denne, hore Haandpanthavere, de, der have Tilbageholdelsesret, de, der have opnaaet Udlæg for Konkursen, de, der have tinglige Brugsrettigheder, samt de ifølge Konkurslovens § 15 kom p o n s a t i o n s b e r e t t i g e d e Kreditorer, alt dog kun, forsaavidt de kunne erholde Dækning ved Hjælp af Haandpantet, Udlaget, Kompensationen o. s. v., medens de for de ikke derved dækkede Beløbs Vedkommende maa deltage i Konkursen. Om U n d e r p a n t h a v e r e i fast Ejendom se § 37 med Note.

ad § 11. Derimod kan Skyldneren ikke selv fortsætte saadanne Retssager, naar Boet ikke vil fortsætte dem.

ad § 12. Forhalingsrenter af anmeldte uforfaldne Krav begynde først at løbe fra Forfaldsdagen.



may — even if the debtor had not previously acquired the proprietary right to the thing in question — acquire such thing itself if it is willing to make the necessary payment, which of course must be made at the right time.

5. That which the debtor during the bankruptcy acquires by means of his own work, his estate cannot interfere with. To this category, however, does not belong that which the debtor may acquire through gains in lotteries, or in a similar accidental manner.

6. That which belongs to third persons, or which for some other reason cannot be included in the assets of the bankruptcy, shall be kept separate and handed over to the person lawfully entitled thereto.

It must, however, be observed that if the debtor or his estate has the right of retention of the object in question, the person entitled thereto, if he wishes to have the object handed over to him, must satisfy the claim of the debtor's estate.

## Chapter II. Of the effect of the bankruptcy with regard to actions brought against the debtor or the prosecution of his rights as against others.

7. After the commencement of the bankruptcy, all claims as against the estate or in respect of objects belonging to it, shall be presented to the estate<sup>1</sup>). A legal action may, however, also be brought against the debtor, if the object of the action is to obtain judgment as against him personally.

8. If, before the commencement of the bankruptcy, an action has been brought against the debtor, it may be continued before the same Tribunal before which it was lawfully commenced, but from the commencement of the bankruptcy the action is transferred to the estate in the condition in which it is found to be.

9. Actions for the purpose of compelling the debtor to undertake or omit something which does not affect the assets of the bankruptcy, as well as actions which concern legal relations existing outside the bankruptcy, are brought against the debtor, without having regard to the occurrence of the bankruptcy.

10. After the commencement of a bankruptcy, any seizure effected against any of the objects belonging to the estate becomes void, and all rights of effecting seizure of, and of obtaining satisfaction by means of execution and compulsory auction of them, become void.

On the other hand, rights obtained through effecting a seizure in execution before the commencement of the bankruptcy, for the purpose of seeking realisation out of the object seized without regard to the bankruptcy, are not lost, and creditors who before the commencement of the bankruptcy have effected a seizure by way of security, do not lose their right to effect a seizure in execution on the objects in due time with a view to obtaining payment; see, however, § 23 and 158.

11. In lawsuits brought by the debtor before the commencement of the bankruptcy, his estate is entitled to substitute itself for the debtor, in so far as the object of the action, according to its nature, is part of the assets.

12. The presentation of a claim on a bankruptcy estate has the same consequences as to interest for delay, interruption of prescription etc., as the bringing of an action.

Interest resulting from the contract itself continues running until the claim in course of the distribution has been paid in its entirety or in part.

<sup>1</sup>) Consequently, even a person who, for example, thinks that he has a proprietary right to some object in the possession of the estate, has to present his claim to the estate and submit to the decision of the Bankruptcy Court. The same rule applies in a higher degree to "assets-creditors" (see § 31b and judgment of 18 February 1890 rendered by the Supreme Court).

*As to § 6.* Amongst the persons who as "separatists" are entitled out of certain moveable objects of the estate, to obtain performance of the same kind, of the same amount and at the same time, as if the bankruptcy had not taken place, and independently of this, are pledge-holders, those who have a right of retention of some object, those who have effected a seizure before the bankruptcy was declared, those who have a right to use some object belonging to the assets, and those creditors who according to § 15 of the Bankruptcy Act have a right of set-off, all this, however, only in so far as they can obtain satisfaction by means of such pledge, seizure, set-off etc., whereas they, in regard to claims which have not been satisfied in such manner, have to present their claims in the bankruptcy. Concerning mortgagees of real estate, see § 37 with note.

*To § 11.* On the other hand, the debtor himself cannot continue such actions, when his estate is unwilling to continue them.

*To § 12.* Interest for delay occasioned by claims presented, which are not due, does not begin running until the day for payment.

### Kapitel III. Om Konkursens almindelige Indflydelse paa de før den af Skyldneren indgaaede Retshandeler.

13. Alle paa Skyldneren hvilende Retskrav, som skulle fyldestgøres af Konkursmassen, kunne af Boet fordres omsatte til Penge efter den Interesse, Fordringshaveren har i deres Opfyldelse.

14. Konkursens Indtræden har til Folge, at alle paa Skyldneren hvilende Retskrav, som skulle fyldestgøres af Konkursmassen, ere at anse som forfaldne i den Forstand, at Boet, uden Hensyn til den fastsatte Forfaldstid, er beføiet til at yde og Fordringshaveren pligtig til at modtage strax.

15. Enhver, der skylder Noget til Konkursboet, kan deri afkorte, hvad han har at fordre i Boet, uden Hensyn til Fordringens eller Modfordringens Beskaffenhed, saafremt Fordringen af Fordringshaveren selv eller af Nogen, efter hvem han har arvet den, er erhvervet inden Konkursens Begyndelse, udenat Skyldneren med Erhververens Vidende befandt sig i noget af de i § 24 omhandlede Tilfælde, eller den hidrorer fra en Forpligtelse, som han under lige Forudsætninger har paadraget sig inden dette Tidspunkt. Reises der Tvivl om Tidspunktet for Erhvervelsen, og kan dette ikke paa anden Maade oplyses, tilstedes det Fordringens Eier med Ed at bekræfte Rigtigheden af sit Opgivende i saa Henseende, hvilken Ed kan modtages af Skifteretten i en Skiftesamling.

Boets Haandskriftskrav maa, forinden Udlobet af den givne Anmeldelsesfrist (§§ 84—85) eller senere, forsaavidt Modkrav ere anmeldte (§ 91), ikke borttransporteres paa en saadan Maade, at vedkommende Skyldneres Ret til Modregning derved udelukkes.

16. Med Hensyn til gjensidig bebyrdende Retshandeler, som ikke forinden Konkursens Begyndelse ere opfyldte fra Skyldnerens Side, gjælde følgende Regler: 1. Har Medkontrahenten Intet erlagt af den ham paahvilende Ydelse, er Boet, hvis det vil indtræde i Retshandelen, forpligtet til fuldt ud at udrede den betingede Modpræstation. Det kan forlanges, at Boet, hvis Tiden for Ydelsen ikke forinden kommer, snarest mulig og senest inden 3 Uger, efterat det dertil er opfordret, skal erklære, om det vil indtræde i Retshandelen og fordre dens Opfyldelse; afgives ingen Erklæring inden denne Frist, er Medkontrahenten berettiget til at antage, at Boet ikke vil fordre Retshandelens Opfyldelse. — 2. Samme Regel gjælder, hvis Medkontrahenten forinden Konkursens Begyndelse for en Del har erlagt den ham paahvilende Ydelse. Vælger Boet i dette Tilfælde ikke at opfylde Kontrakten, skal det udlevere det Modtagne, forsaavidt det endnu findes i Boet, dersom Medkontrahenten har taget et gyldigt Forbehold om Tilbagelevering i Tilfælde af Modpræstationens Udeblivelse eller det iøvrigt ifølge Forholdets Beskaffenhed maa antages, at hans Eiendomsret ikke var at anse for opgivet, forend han erholdt Modpræstationen, saasom naar der er solgt mod kontant Betaling, udenat Sælgeren senere udtrykkelig eller stiltiende har indrømmet Kjøberen Kredit. Dog er Boet ikke forpligtet til at udlevere det Modtagne, forinden Medkontrahenten har holdt det skadesløst for den Del af Vederlaget, som Skyldneren tidligere maatte have erlagt. — 3. Den under Nr. 2 givne Regel om Tilbagelevering af modtagne Ydelser, som endnu maatte være i Behold i Boet, er under lige Betingelser anvendelig i Tilfælde af, at Medkontrahenten forinden Konkursens Begyndelse har erlagt den hele ham paahvilende Ydelse.

*ad § 14.* Om den veksletlige Virkning af en Akceptants Konkurs, se Vexellovens § 30. Om Virkningen af, at en Modtager af et Konnossement er kommet under Konkurs, inden han har faaet Varerne udleverede, se Solovens § 166. — Se endvidere § 39 i Lov om Køb af 6 Apr. 1906 (ofv. S. 81).

*ad § 15.* Paragraffen antages dog kun at hjemle Kreditor Modregningsret overfor Krav, der fra Fallenten ere overgaaede til Boet, men ikke overfor Krav, som Boet selv har erhvervet overfor Kreditor. Ellers vilde da ogsaa en Kreditor i Boet kunne skaffe sig fuld Dækning ved paa Boets Auktioner at købe for et til hans Fordring svarende Beløb.

### Chapter III. The general effect of the bankruptcy in regard to legal transactions concluded by the debtor before its commencement.

13. The administration of his estate is entitled to demand that all claims as against the debtor which have to be paid out of the assets, shall be estimated in money according to the interest the creditor has in their realisation.

14. The commencement of a bankruptcy has as a consequence that all claims on the debtor which are to be paid out of the assets, are to be considered as due for payment, in the sense that the estate, without having regard to the stipulated time for payment, is entitled to make payment, and the creditor is compelled to receive it, forthwith.

15. Any person owing anything to a bankruptcy estate, may deduct from the amount his claim on the assets, without having regard to the nature of the principal claim or the claim to be set off, provided such claim has been acquired by the creditor himself, or by a person from whom he has inherited it, before the commencement of the bankruptcy, unless the debtor to the knowledge of the creditor was subject to one of the cases mentioned in § 24, or the claim results from an obligation which on similar conditions he has incurred within this period. If doubt arises with regard to the time of its acquisition, and if this cannot be ascertained in any other manner, the owner of the claim is permitted to confirm on oath the correctness of his statement in this regard, which oath may be taken at a meeting of the creditors before the Bankruptcy Court.

The written claims in the possession of the bankruptcy estate must not, before the expiration of the period granted for presentation of claims (§§ 84—85), nor subsequently, in so far as cross-claims have been produced (§ 91), be transferred in such a manner as to exclude the right of the interested debtors to avail themselves of a set-off.

16. To legal transactions creating reciprocal obligations which, before the commencement of the bankruptcy, have not been fulfilled by the debtor, the following rules apply: 1. If the other contracting party has performed nothing of the obligation at his charge, the estate, if it is willing to enter upon the contract, is compelled to discharge in full the stipulated counter-obligation. The estate may be requested, if the time of performance of the obligation in question has not already arrived, as soon as possible, and at the latest within three weeks after having been asked to do so, to declare whether it desires to enter upon the transaction and demand its execution; if no declaration is made within this period, the other contracting party is entitled to presume that the estate does not intend to demand the fulfilment of the contract; — 2. The same rule applies if the other contracting party has before the commencement of the bankruptcy in part discharged the obligation which was incumbent on him. If in this case the estate chooses not to fulfil the contract, the estate must restore what it has received, provided the amount or object is still in the possession of the estate, if the other contracting party has made a valid reservation as to its return in case of the non-fulfilment of the counter obligation, or if according to the nature of the transaction it must be presumed that his proprietary right was not to be considered as abandoned until the fulfilment of the counter obligation, as, for example, when a sale has been effected subject to payment in cash without the seller subsequently having expressly or tacitly granted credit to the purchaser. The estate is, however, not bound to restore what it has received until the other contracting party has compensated it for that part of the obligation which the debtor may have previously discharged; — 3. The rule given under No. 2 with regard to the return of that which the estate has already received, and which may still be in its possession, applies on similar conditions in case the other contracting party has before the commencement of the bankruptcy, discharged the entire obligation which was incumbent on him.

*To § 14.* As to the effect, from the point of view of the Bills of Exchange Law, brought about by the bankruptcy of an acceptor, see § 30 of the Bills of Exchange Act. With regard to the effect resulting from the fact that a receiver of a bill of lading has become bankrupt before he has had the goods delivered to him, see the Maritime Law § 166. Furthermore, see § 39 of the Purchase and Sale Act of 6 April 1906 (above p. 81).

*To § 15.* The Article is, however, supposed only to authorise the creditor to avail himself of a set-off in regard to such claims as have passed from the bankrupt to his estate, but not in regard to claims which the estate itself has acquired as against the creditor. If this rule did not obtain a creditor would be entitled to obtain full payment by buying objects at the auctions of the estate for an amount corresponding to his claim.

I alle Tilfælde, hvor der ikke paahviler Boet nogen Forpligtelse til at udlevere det Ydede, saavel som hvor det vælger ikke at opfylde Retshandelen, er Medkontrahentens Ret indskrænket til at konkurrere i Boet for den ham tilkommende Fordring og for det mulige Krav paa Erstatning for det Tab, han lider ved, at Kontrakten ikke opfyldes.

17. Har Skyldneren leiet eller forpagtet en urolig Ting, indtræder Boet fra Konkursens Begyndelse i hans Sted, forsaavidt ikke Retshandelen indeholder afvigende Bestemmelser.

Dog kan saavel Boet som Udleieren opsiges Leie- eller Forpagtningsforholdet med sædvanligt Varsel til almindelig Fardag, selv om det maatte være indgaaet for en bestemt længere Tid eller med længere Opsigelsesfrist, men den Opsigende bliver da pligtig at skadeslosholde Medkontrahenten for dennes Interesse i Retsforholdets Fortsættelse.

Med Hensyn til de i Forordning af 15de Juni 1792 § 11 omhandlede Forpagtninger af Bondegaaarde har det sit Forblivende ved den gjældende Rets Regler.

Ved Livsfæsteforhold indtræder Boet ligeledes, udenat Jorddrotten kan hindre det, i Fæsterens Ret, dog at det ikke uden dennes Samtykke kan opsiges Forholdet eller med Jorddrotten forene sig om dets Ophor.

18. Ere Flere, der hæfte solidarisk for samme Fordring, komne under Konkurs, da har Fordringshaveren Ret til i ethvert af Boerne at fordre Udlæg efter Fordringens hele paalydende Beløb, indtil han har faaet sit hele Tilgodehavende dækket. Udgjøre Udlægene sammenlagte mere end den hele Fordrings Beløb, da tilfalder det Overskydende det eller de Boer, som, dersom Fordringen alene havde været gjort gjældende imod samme, vilde have havt Ret til at fordre Tilbagebetaling af de øvrige, dog selvfølgelig saaledes, at intet Bo faar mere af det Overskydende, end det selv har betalt paa Fordringen. Iøvrigt have i deslige Tilfælde de Boer, i hvilke en saadan Fordring er anmeldt, intet Krav paa hverandre indbyrdes.

19. Er en Fordring af en Medskyldner eller Forlover indfriet efter Konkursens Begyndelse, har den, der har indfriet Fordringen, samme Ret baade mod Medforlovers og Skyldneres Boer, som den oprindelige Fordringshaver vilde have havt, indtil han har faaet fuldt udbetalt, hvad han, om Skyldneren eller Medforloveren ikke havde været under Konkurs, vilde have kunnet fordre. Derimod bliver det at afgjøre efter den borgerlige Rets Regler, om den, der forend Konkursens Begyndelse har indfriet en Fordring, erhverver samme Ret imod Medforlovers og Skyldneres Boer som den oprindelige Fordringshaver.

## Kapitel IV. Om Retshandlers Afkræftelse ved senere paafølgende Konkurs.

20. Dersom Skyldneren i Lobet af de sidste 8 Uger forend Konkursens Begyndelse har betalt Gjæld<sup>1</sup>, forfalden eller ikke forfalden, ved til Fordringshaveren at afhænde fast Eiendom, Skib eller andre Gjenstande, som efter de Paagjældendes Stilling og Forhold maa anses for usædvanlige Betalingsmidler, eller har betalt ikke forfalden<sup>2</sup> Gjæld, selv om dette er sket med sædvanlige Betalingsmidler, kan Boet fordre, at den stedfundne Betaling skal gaa tilbage, og at Fordringshaveren som Følge heraf skal tilbagegive det Modtagne eller dets Værdi.

21. (Som ændret ved Lov Nr. 30 af 20 Marts 1901).

Panterrettigheder, som Skyldneren i den i § 20 nævnte Tid maatte have indrommet nogen til Sikkerhed for Forpligtelser, der ikke samtidig stiftes, kunne ikke gøres gjældende mod Boet.

*ad § 18.* Reglen om Kreditors Ret til at konkurrere med hele sin Fordring antages at gælde ikke blot, naar de flere solidariske Skyldnere ere komne under Konkurs, forinden nogen Afbetaling finder Sted, men ogsaa naar en ikke falleret Medskyldner har betalt Afdrag, efter at en anden af Skyldnerne er kommet under Konkurs. Reglen maa derhos gælde, selv om en eller flere af Skyldnerne kun hæfte subsidiært, f. Ex. simple Kautionister.

<sup>1</sup>) Ordet „Gjæld“ antages her at maatte forstaaes som omfattende ikke blot Pengeskyld, men ogsaa andre Forpligtelser. — <sup>2</sup>) Ved ikke forfalden Gjæld maa her forstaaes Gjæld, hvis Betaling forudsætter begge Parter Samtykke i Modsatning til Gjæld, som enten Kreditor er berettiget til at forlange betalt eller Debitor berettiget til at betale.

In all the cases in which the estate is under no obligation to surrender what it has received, as well as those in which it chooses not to fulfil the contract, the right of the other contracting party is limited to competing with the other creditors in the estate for the claim due to him and for the possible claim for damages arising from the loss he sustains owing to the non-fulfilment of the contract.

17. If the debtor has hired or leased an immovable object, the estate from the commencement of the bankruptcy takes his place, provided the contract does not contain any stipulation to the contrary.

The estate, as also the lessor, may, however, determine the hiring contract or the lease after having given the usual notice for the next quitting day, even when the transaction may have been concluded for a definite longer term or with a longer period of notice, but the giver of the notice is then liable to compensate the other contracting party for the value of his interest in having the contract continued.

With respect to the leases of landed property mentioned in the Ordinance of 15 June 1792 § 11, the legal rules now in force will continue to apply.

The bankruptcy estate is similarly subrogated to the rights of the tenant in the case of life tenancies, without the landlord being in a position to prevent it; the estate, however, cannot without the consent of the tenant give notice to determine the contract, nor come to terms with the landlord as to its termination.

18. If several persons who are jointly liable for the same claim become bankrupt, the creditor has a right to demand payment against each of the estates according to the total amount of his claim, until all that is due to him has been fully paid. If the dividends together exceed the total amount of the claim, the amount of the excess accrues to the estate or estates which, if the claim had been preferred against such estate or estates only, would have been entitled to demand restitution from the others, in such a manner, however, that no estate receives more of the excess than it has paid on the claim itself. In similar cases, however, the estates against which the claim has been advanced, have no right of contribution against one another.

19. If a claim has been paid after the commencement of the bankruptcy by one of several co-debtors or by a surety, the person who has paid the claim has the same right both against the estates of co-sureties and those of co-debtors, as the original creditor would have had, until he has been fully paid what he would have been entitled to claim if the co-debtor or the co-surety had not been bankrupt. On the other hand, the question whether a person who has paid a claim before the commencement of the bankruptcy, acquires the same right as against the estates of co-sureties and co-debtors as the original creditor, must be decided according to the rules of the civil law.

#### Chapter IV. The annulment of legal transactions owing to subsequent bankruptcy.

20. If the debtor, during the last eight weeks before the commencement of the bankruptcy, has paid a debt<sup>1)</sup>, due or not due, by alienating in favour of the creditor real estate, a vessel or other objects, which having regard to the position and circumstances of the interested person, must be considered an unusual mode of payment, or has paid debts which are not due<sup>2)</sup>, even by way of the usual means of payment, the estate may claim that the payment shall be annulled, and that the creditor in consequence shall restore what he has received or its value.

21. (As modified by Act No. 30 of 20 March 1901.)

Those pledge-rights which the debtor during the period mentioned in § 20 may have granted to any person as security for obligations which are not simultaneously incurred, cannot be advanced against his estate.

*To § 18.* The rule as to creditor's right to compete with his total claim is supposed to apply not only when several joint debtors have become bankrupt before any payment is made, but also when a co-debtor who is not bankrupt has paid on account after one of the other debtors has become bankrupt. The rule also applies even when one or more of the debtors is or are only subsidiarily liable, for example, as a simple surety or sureties.

1) The word "debt" is here understood as comprising not only money debts, but also other obligations. — 2) By a debt which is not due, must here be understood a debt the payment of which requires the consent of both parties, in contrast to a debt the payment of which either the creditor is entitled to claim or the debtor is entitled to pay.

Fremdeles har det sit Forblivende ved Bestemmelsen i Forordningen af 28 Juli 1841 § 2, dog med den Forandring, at Underpanteret i Løsore bortfalder, naar Pantebrevet er udfærdiget i de sidste 8 Uger for Konkursens Begyndelse.

Dersom Panthaveren i de i denne Paragraf omhandlede Tilfælde i Kraft af Panteretten har faaet Fyldestgørelse, skal han tilsvare Boet det modtagne eller dets Værdi.

22. De i §§ 20 og 21, første Stykke, indeholdte Bestemmelser komme dog ikke til Anvendelse, saafremt det oplyses, at Skyldneren endnu var solvent, da Sikkerheden blev stillet eller Betalingen skete, ei heller, naar Kreditor eller Medkontrahenten afkræfter den Formodning om, at han har været vidende om Skyldnerens Insolvents, som i de i bemeldte Paragrafer omhandlede Tilfælde skal anses for at være tilstede.

23. (Som ændret ved Lov Nr. 30 af 20 Marts 1901.)

Er Udlæg eller Afsætning gjort efter et af Skyldneren i den Tid, som i § 20 er sagt, indgaaet Forlig om Betaling af Gæld, eller efter en Dom, der er erhvervet i en i fornævnte Tidsrum anhängiggjort Sag, bortfalder enhver af Udlæget eller Afsætningen flydende særlig Ret imod Boet, medmindre det oplyses, at Skyldneren, da Forliget blev indgaaet eller Sagen anhängiggjort, endnu var solvent, eller det ifølge samtlige Omstændigheder maa antages, at Fordringshaveren ikke var vidende om Skyldnerens Insolvens.

Udlæg ifølge Forlig og Dom samt Afsætning taber, selv om Afkræftelse ikke kan finde Sted efter denne Paragrafs 1ste Stykke, enhver Retsvirkning over for Skyldnerens Konkursbo, naar Konkursen begynder senest den 10de Dag efter den Dag, da Udlæget eller Afsætningen blev givet.

Naar Afkræftelse finder Sted efter denne Paragraf, skal Udlægshaveren tilsvare Konkursboet den Fyldestgørelse, han maatte have faaet paa Grundlag af Udlæget.

24. Har Skyldneren paa en Tid, hvor han er undvegen for Gjæld, eller hvor hans Bo af nogen Fordringshaver er begjært taget under Konkursbehandling, eller hvor han som Følge af, at han har set sig nødsaget til at standse sine Betalinger, eller af andre Grunde<sup>1)</sup> maatte forudse sit Fallissement som nær forestaaende, foretaget nogen Disposition, derunder indbefattet Betaling af forfalden Gjæld, hvorved han paa en mod Straffelovens § 261<sup>2)</sup> stridende Maade har begunstiget nogen enkelt Kreditor paa de andres Bekostning, kan Boet, saafremt Konkursen virkelig paafølger, fordre, at den stedfundne Betaling eller den trufne Disposition gaar tilbage og det Modtagne eller dets Værdi tilbagegives, hvis paagjældende Kreditor, dengang Betalingen fandt Sted eller Dispositionen blev truffen, var vidende om de foranførte Omstændigheder.

25. Naar Nogen i Henhold til de foregaaende Regler til Boet skal udlevere det Modtagne eller dets Værdi, er han berettiget til at erholde tilbagegivet, hvad han maatte have ydet Skyldneren mere end det, hvorfor han har modtaget Betaling, ligesom han overhovedet, naar en Betaling gaar tilbage, i Forhold til Boet bliver at behandle, som om ingen Betaling havde fundet Sted.

Tilbagefordring af en med sædvanlige Betalingsmidler erlagt Betaling af en forfalden Vexel kan ikke gjøres gjældende imod den, som vilde have havt Ret til at fordre Vexlen dækket af Andre i Tilfælde af Skyldnerens Fallissement, men som ved den stedfundne Betaling af Vexlen er bleven forhindret i at gøre denne Ret gjældende, hvorimod det til Vexlens Dækning medgaaede Beløb kan søges tilbage hos den, hvem Vexlens Betaling tilsidst vilde komme tilgode, og som i Tilfælde af, at den ikke var bleven betalt, maatte have udredet Beløbet, saafremt han, da han udstedte Vexlen eller bortendosserede den, var vidende om, at Skyldneren befandt sig i noget af de i § 24 omhandlede Tilfælde.

<sup>1)</sup> f. Ex. efter Omstændighederne forgæves Akkordtilbud, Beskikkelse efter § 44, Arrest eller Exekution for større Beløb. — <sup>2)</sup> Straffelovens § 261 er citeret ovf. S. 122. Da imidlertid § 24 giver Hjemmel til at afkræfte endog Betaling af forfalden Gæld, indeholder Henvisningen til Strl. § 261 ingen virkelig Begrænsning, men er overflødig.

Furthermore, the provision contained in § 2 of the Ordinance of 28 July 1841 continues to apply, with the modification, however, that a mortgage right on movables becomes void when the mortgage bond has been issued during the last eight weeks before the commencement of the bankruptcy.

If the pledgee or mortgagee in the cases mentioned in this article has obtained satisfaction in virtue of his pledge or mortgage, he shall hand over to the estate what he has received or its value.

22. The provisions contained in §§ 20 and 21, first paragraph, however, do not apply if it is ascertained that the debtor was still solvent when the security was given or the payment was made, nor do they apply when the creditor or other party to the transaction rebuts the presumption that he knew of the debtor's insolvency which, in the cases dealt with in the said Articles, is considered as being existent.

23. (As modified by Act No. 30 of 20<sup>th</sup> March 1901.)

If a seizure in execution or a seizure by way of security has been effected in pursuance of a compromise concluded by the debtor during the period mentioned in § 20 as to payment of a debt, or in pursuance of a judgment obtained in an action brought during the said period, any special claim against the estate arising from the seizure in execution or the seizure by way of security becomes void, unless it is proved that the debtor, when the compromise was concluded or the action brought, was still solvent, or unless, under all the circumstances, it must be assumed that the creditor had no knowledge of the debtor's insolvency.

Seizure in execution in pursuance of a compromise or judgment and seizure by way of security, even if avoidance according to the first paragraph of this article cannot take place, lose any legal effect as against the debtor's bankruptcy estate, when the bankruptcy begins at the latest on the tenth day after the day on which the seizure in execution or seizure by way of security was effected.

If avoidance takes place according to this Article, the person who seizes shall restore to the bankruptcy estate the satisfaction he may have obtained on the basis of the seizure.

24. If the debtor, at a time when he has absconded by reason of his debts, or when any of his creditors has requested that his estate shall be administered in bankruptcy, or when by reason of the fact that he has found himself compelled to suspend his payments, or for other reasons<sup>1)</sup>, was bound to foresee that his bankruptcy was imminent, has made any disposition, including payment of a debt which is due, in a manner contrary to the provisions of § 261<sup>2)</sup> of the Penal Code, so as to favour any one of his creditors at the expense of others, the estate may, provided bankruptcy actually ensues, demand the annulment of the payment or the disposition, and that what has been received or its value shall be restored to the estate, if the creditor in question at the time when the payment or disposition was made had knowledge of the circumstances above mentioned.

25. If any person, according to the rules previously stated, shall hand over to the bankruptcy estate the object received or its value, he is entitled to obtain in return that which he may have given the debtor in addition to that for which he has received payment, and in general, when a payment is annulled, he is treated in relation to the estate as if no payment had been made at all.

The restitution of a payment, made by way of the ordinary means of payment, of a bill of exchange which is due, cannot be invoked against a person who would have had a right to demand payment of the bill of exchange by other persons in the case of the bankruptcy of the debtor, but who, owing to the payment of the bill of exchange which has been made, has been prevented from taking advantage of this right; whereas the recovery of the amount which has been necessary for the payment of the bill of exchange can be demanded from the person who benefited by the payment thereof in the last instance, and who, in case it had not been paid, would have had to disburse the amount, provided that, when he issued or indorsed the bill of exchange, he knew that the debtor found himself in one of the cases mentioned in § 24.

<sup>1)</sup> For example, according to circumstances, an offer of composition made in vain, a summons served by a notary or two reliable men according to § 44, seizure or execution for a considerable amount. — <sup>2)</sup> § 261 of the Penal Code has been quoted above p. 122. As however § 24 even provides for the annulment of payments of debts which are due, the reference made to § 261 of the Penal Code implies no real limitation, but is superfluous.

26. Den, som i det sidste Aar forend Konkursens Begyndelse og paa en Tid, da Skyldneren var insolvent, har modtaget nogen Gave af denne, er pligtig at tilbagegive saadan Gave eller erstatte dens Værdi, dersom han maa antages ved dens Modtagelse at have været vidende om nogen Omstændighed, der kunde lade ham formode Skyldnerens Insolvents. Er der i Anledning af den ham gjorte Gave paaført Modtageren nogen Udgift, bør denne erstattes ham af Boet.

Foranstaaende skal ogsaa gjælde, naar Retshandelen udvortes fremtræder under Form af et Salg, Magelæg, Leiemaal eller lignende Overdragelse, hvis det paa Grund af Misforholdet mellem de gjensidige Ydelser eller iøvrigt efter Omstændighederne skjøntes, at Retshandelen i Virkeligheden indeholder en Gave, dog at Boet tilsvare, hvad der fra den anden Side maatte være ydet.

27. Dersom Skyldneren i det sidste Aar forend Konkursens Begyndelse har anvendt et efter hans Formuestilstand uforholdsmæssig stort Beløb til Stiftelse af Livrente, Overlevelsere, Livsforsikring eller lignende Indtægt for sig selv, sin Ægtefælle eller sine Livsarvinger eller som Gave til Andre, kan Boet — forsaavidt en Gave er ydet til Andre, dog kun under den i § 26 angivne Forudsætning — gøre den Ret gjældende til at fordrø Oplosning af Kontrakten og Opgjørelse, som Skyldneren selv kunde benytte, saafremt herved kan erhverves en Indtægt for Boet.

28. Det har fremdeles sit Forblivende ved den i Danske Lovs 5—14—46, andet Led, indeholdte Bestemmelse om, at ingen Afhændelser, som ere skete ved Gave, Kjøb eller i andre Maader imellem Ægtefæller, Forældre og Born eller Arvelader og Arvinger, skulle komme Kreditorerne i Konkursboer til Skade, naar de befindes at være skete, efterat Skyldnerne vare komne i den Tilstand og vare saa haardt med Gjæld beladte, at de ei deres Gjæld kunde betale.

29. Har den, med hvem Skyldneren har indgaaet nogen Retshandel af saadan Beskaffenhed, som omhandles i §§ 20—28, overdraget de modtagne Gjenstande eller Rettigheder til en Anden, da har Boet ogsaa mod denne Ret til at fordrø Gjenstandene eller Rettighederne tilbagegivne eller deres Værdi erstattet, saafremt han var vidende om, at der ved Overdragelsen tilsigtedes at lægge Hindringer iveien for Boets Ret.

30. (Som ændret ved Lov Nr. 30 af 20 Marts 1901).

Sag, hvorved Boet i Henhold til Reglerne i §§ 20—29 vil angribe indgaaede Retshandler, maa anlægges inden 4 Uger efter den Skiftesamling, hvori Prøvelse af vedkommende Fordring har fundet Sted, medmindre Sagen skal fores paa Færøerne, Island eller de vestindiske Øer eller i Udlandet, i hvilket Tilfælde den fornødne Foranstaltning hertil maa ske inden 8 Uger.

Afkraftelses-Indsigelse for Skifteretten maa fremsættes inden den ovenangivne Frist.

## Kapitel V. Om Ordenen, hvori Fordringerne mod et Konkursbo skulle fyldestgøres.

### A. Om Ordenen mellem dem, der skulle fyldestgøres af Konkursboets almindelige Masse.

31. Af den fælles Konkursmasse blive fremfor al anden Gjæld at fyldestgøre de Fordringer, som lovligen ere opstaaede i Anledning af selve Konkursen og Konkursboets Behandling.

Hertil henregnes: a) De til Skyldnerens tarvelige, men dog sømmelige Begravelse medgaaende Omkostninger, forsaavidt Boet overhovedet er pligtigt til at besørge denne. — b) Alle Fordringer paa Boet, som opstaa af Konkursbehandlingen og af de Retshandeler, hvori Boets Bestyrelse gyldigen har indladt sig i Anledning af denne<sup>1</sup>. — c) Samtlige Skiftegebyrer<sup>2</sup> og de dermed forbundne Afgifter til det Offentlige.

<sup>1</sup>) Jvf. Bemærkning til § 7. — <sup>2</sup>) Se herom Lov af 30 November 1874 om Betalingen for de til Skiftevesnet hørende Forretninger m. m. Skifteafgiften er som Hovedregel  $\frac{2}{3}$  pCt. af Boets hele Formuemasse uden Fradrag af Gæld eller deslige.



26. Any person who, during the last year before the commencement of the bankruptcy, and at a time when the debtor was insolvent, has received any gift from him, is liable to return the gift or give compensation for its value, if it is to be supposed that, at the time of receiving it, he had knowledge of any circumstance of a nature to cause him to assume that the debtor was insolvent. If the receiver owing to the gift received by him, has incurred any expense, this must be refunded to him by the estate.

What has just been said also applies when the transaction outwardly appears as a sale, exchange, hire or similar transfer, if, owing to the disproportion between the reciprocal obligations, or owing to other circumstances, it may be inferred that the transaction in reality involves a gift; the estate, however, has to restore that which it may have obtained from the other side.

27. If the debtor, during the last year before the commencement of the bankruptcy, has spent an amount which is out of proportion to his means on life annuities, reversionary annuities, life assurance or similar revenue for himself, his wife or his natural heirs, or on gifts to other persons, the estate — in the case of a gift to other persons, however, on the condition mentioned in § 26 — may take advantage of the right to demand the rescission of the contract and settlement of which the debtor himself could avail himself, if by such a course a revenue can be acquired for the estate.

28. The provision contained in the Danish Law 5—14—46, second section, will still apply, to the effect that no alienations by way of gift, purchase or in any other manner between husband and wife, parents and children, testator and his heirs, shall be detrimental to the creditors of bankruptcy estates, when such alienations are found to have been made after the time at which the debtors had arrived at such a situation and were so heavily burdened with debt as not to be able to pay their debts.

29. If any person with whom the debtor has concluded any transaction of such a nature as is dealt with in §§ 20—28, has transferred the objects received or rights acquired to some other person, the estate has also the right against such person to demand that the objects or the rights in question shall be restored, or their value refunded, provided he knew that the object of the transfer was to prevent the estate from pursuing its rights.

30. (As modified by Act No. 30 of 20 March 1901.)

An action by means of which the estate, in pursuance of the rules of §§ 20—29, wishes to contest concluded legal transactions, must be brought within four weeks after the meeting of the creditors in which the verification of the claim in question has taken place, unless the action shall be brought in the Farøe Islands, Iceland or the islands of the West Indies or abroad, in which case the necessary measures for this purpose must be taken within eight weeks.

The objection on the ground of nullity must be presented to the Distribution Tribunal within the period indicated above.

## Chapter V. The order in which the claims against a bankruptcy estate shall be paid.

### A. The ranking of those claims which are to be paid out of the general assets of the bankruptcy estate.

31. Out of the general assets of the bankruptcy, before all other debts, shall be paid such claims as have lawfully arisen owing to the bankruptcy itself and of the bankruptcy proceedings.

To these claims belong: a) The expenses necessary for the simple but befitting burial of the debtor, in so far as the estate is, in general, liable to carry this out; — b) All claims on the estate arising from the proceedings of the bankruptcy and from such transactions as the administrators of the assets have legally concluded in pursuance of the bankruptcy<sup>1)</sup>; — c) All the bankruptcy costs<sup>2)</sup> and in connection with these all dues to be paid to the State.

<sup>1)</sup> See the note to § 7. — <sup>2)</sup> See in this respect the Act of 30 November 1874 regarding the payment of expenses arising from the proceedings of the Bankruptcy Court etc. The bankruptcy charges are, as a general rule,  $\frac{2}{3}$  per cent, of the total assets of the estate without deducting debts and similar expenses.

I fornødent Fald nyde de under Litra a og b nævnte Fordringer Fortrin fremfor de under Litra c nævnte.

32. Efter de i den foregaaende Paragraf omhandlede Krav bliver dernæst af Boet at fyldestgjøre Tiendetagerens Fordring paa den istedetfor Naturaltienden trådende Tiendeafgift, paa den Maade og med de Begrændsninger, som hjemles i den gjældende Ret.

33. Fremfor simpel personlig Gjæld blive følgende Fordringer i nedenstaaende Orden at fyldestgjøre: 1. Krav af den Beskaffenhed, som omhandles i Forordning angaaende det offentlige Kasse- og Regnskabsvæsen i Almindelighed af 8de Juli 1840 § 50 jfr. Danske Lovs 5—14—37, hvad enten Fordringen tillige er forbunden med en lovbestemt Panteret eller ikke. — 2. Lige med hverandre blive dernæst følgende Fordringer af fyldestgjøre: a) Leie af Beboelsesværelser og andre Lokaler, dog ikke for længere Tid tilbage end 1 Aar fra den sidste Fardag for Konkursens Begyndelse. Er Leien bestemt under Eet for længere Tid, fordeles Afgiften lige paa det hele Tidsrum for at udfinde Gjennemsnitsleien for et Aar; er Leien bestemt forskjellig for forskjellige Tidsrum, beregnes den forholdsvis; b) Landgilde; c) Skatter og Afgifter, saavel personlige som reelle, i samme Omfang som hidtil, forsaavidt de ikke maatte være blevne dækkede af de Gjenstande, hvorpaa de hvile, saavel som Jorddrottens Regreskrav i Anledning af Skatter, som han har betalt for Brugeren, Alt med de af den hidtil gjældende Lovgivning følgende Begrændsninger i Henseende til Tiden; d) Forstrækninger til Avlingens Fortsættelse, som maatte være ydede Fæstebønder af Jorddrotten eller Andre; e) Jorddrottens Krav paa Erstatning for Gaardfæld og for Mangler ved Besætning og Inventarium; f) saavel hoiere som lavere Tjenendes Krav paa Lon og Kostpenge, dog ikke for længere Tid tilbage end eet Aar fra den sidste Fardag for Konkursens Begyndelse, samt Fabrikarbejderes, Haandværkssvendes, Haandværksdrenges og Dagleieres Krav paa Betaling for Arbejde, ydet i det sidste Aar for Konkursen. — 3. Efter de under Nr. 2 nævnte Fordringer fyldestgjøres Apothekeres Fordringer for krediterede Lægemedler, Lægers Fordringer for Honorar og de paa Sygebesøgene anvendte Udgifter, Jordemødres, Barberers, Vaagekoners og deslige Fordringer i Anledning af ydet Sygehjælp, dog ikke for mere end det foregaaende og det løbende Kalenderaar.

34. Efter de i den foregaaende Paragraf omhandlede Krav, men forud for simpel personlig Gjæld blive endvidere at fyldestgjøre de Fordringer, som maatte være forbundne med almindeligt, lovbestemt eller villiesbestemt, Underpant i Løsøre. Imellem disse Fordringer indbyrdes bliver den ældre at fyldestgjøre fremfor den yngre.

35. Efterat de i de foregaaende Paragrafer omhandlede Fordringer ere fyldestgjorte, blive alle andre Krav paa Skyldneren at tilfredsstille i lige Forhold, dog at Gaver, som ikke ere fuldbyrdede forinden Konkursen, ikke kunne fordres opfyldte af Boet, undtagen forsaavidt dette kan ske uden Skade for Kreditorerne.

## B. Om deres Retsstilling, som have Krav paa Fyldestgjørelse af enkelte Ting eller Rettigheder, der henhøre til Boet.

36. Det indbyrdes Forhold imellem de Retskrav, der hjemle en særlig Raadighed over eller Fortrinsret i enkelte Ting eller Rettigheder, tilhørende Boet, bestemmes efter den borgerlige Rets Regler, dog med Iagttagelse af nedenstaaende Bestemmelser.

37. (Som ændret ved Lov Nr. 66 af 15 April 1887.)

Alle villiebestemte Underpanterettigheder og alle lov- eller retsbestemte Pante-rettigheder blive at fyldestgjøre gennem Konkursbehandlingen efter en af Boet foretagen Realisation af Pantet. Denne skal, for saa vidt angaar faste Eiendomme,

ad § 36. Jfr. Note ad § 6.

ad § 37. Ved denne Paragrafs første Stykke maa nu mærkes, at Lov Nr. 66 af 9 April 1891 om Tvangsauktioner m. m. har indrømmet Underpanthavere i fast Ejendom en vis Ret til at forfølge deres Panteret, uafhængig af Konkursbehandlingen. Det hedder herom i nævnte Lovs § 47 (saaledes som denne Paragraf er ændret ved Lov Nr. 47 af 1 April 1905): „I de her omhandlede Boer [deriblandt Konkursboer] skal enhver Underpant-haver i fast Ejendom og dermed som Tilbehør pantsat Løsøre være berettiget til inden 1 Maaned efter Rettens Beslutning om, at Konkursbehandling skal finde Sted, ... at erklære, at han alene vil

If necessary the claims mentioned under the letters a and b have preference to those mentioned under letter c.

32. After the claims mentioned in the preceding article, the estate must in the next instance pay the claim of the collector of the tithe in money which has been substituted for the old tithe in kind, in the manner and with the limitations authorised according to the law now in force.

33. Before simple personal debts the following claims have to be paid in the order following: 1. Claims of the nature mentioned in the Ordinance concerning the administration of public funds and accounts in general of 8 July 1840, § 50 (see the Danish Law 5—14—37), whether such claim is at the same time connected with a legal pledge-right or not. — 2. In the next place, the following claims must be paid on the same footing: a) The rent of dwelling apartments and other premises, not going further back, however, than one year from the last quitting day before the commencement of the bankruptcy. If the rent has been fixed *en bloc* for a long period, the charge is equally distributed over the whole period in order to find the average rent for a year; if the rent has been differently fixed for different periods, the charge is calculated proportionately; — b) The rent of landed property; — c) Taxes and dues, personal as well as real, in the same measure as heretofore, provided they have not been covered by the objects on which they are charged, and, furthermore, the claim of recourse of the landlord in regard to taxes which he may have paid for his tenant, all subject to the limitations as to time resulting from laws heretofore in force; — d) Moneys advanced for the continuation of the exploitation of farms, which the landlord or other persons may have granted to tenants; — e) The landlord's claim to compensation for the deterioration of buildings and owing to defects of live stock and fixtures; — f) The claims of both superior and inferior servants in regard to salary and allowance for board, not going further back, however, than one year from the last day for notice to quit occurring before the commencement of the bankruptcy, and the claims of factory workers, journeymen mechanics, mechanics' apprentices and day labourers in respect of payment for work done during the last year before the bankruptcy; — 3. After the claims mentioned under No. 2 must be paid the claims of chemists for medicine provided on credit, of medical practitioners for fees and for the expenses of visits to sick persons, of midwives, barbers, nurses and other similar persons owing to attendance on the sick, for no longer period, however, than the previous and the current calendar year.

34. After the claims mentioned in the preceding Article, but before simple personal debts, there must furthermore be paid such claims as are connected with a general hypothecation, legal (tacit) or conventional, of movables. As between claims of this class, the earlier must be paid in preference to the more recent.

35. After the claims mentioned in the previous Articles have been paid, all other claims on the debtor shall be paid in equal proportion; the estate cannot, however, be required to give effect to gifts which have not been completed before the bankruptcy, unless this can be done without detriment to the creditors.

#### B. The legal position of such persons as have a right to satisfaction out of particular objects or rights belonging to the estate.

36. The position of creditors whose legal claims give rise to a special right of disposal or a preferential right in respect of certain objects or rights belonging to the estate, is determined by the rules of the civil law, subject, however, to the observance of the provisions mentioned below.

37. (As modified by Act No. 66 of 15 April 1887.)

All mortgage rights established by agreement and all legally or judicially established pledge-rights must be discharged by means of the bankruptcy proceedings, after the realisation of the property effected by the estate. Such realisation, in so far

To § 36. See note to § 6.

To § 37. As to the first paragraph of this Article it must be observed that Act No. 66 of 9 April 1891 regarding compulsory sales by auction etc. has granted to mortgagees of immovables a certain right to pursue their mortgage rights independently of the bankruptcy proceedings. § 47 of the said Act as modified by Act No. 47 of 1 April 1905 reads as follows: "In the case of the estates (including bankruptcy estates) here dealt with, any mortgagee of immovables and of movables accessory thereto, is entitled, within one month of the decision of the Court declaring the opening of the proceedings of the bankruptcy.... to declare that he will only take advantage

naar det forlanges af nogen anden Panthaver i samme, hvis Fordring er forfalden, uden Hensyn til, om Konkursdekretet er paaanket, ske uden andet Ophold end det, der følger af Iagttagelsen af de i Lovgivningen givne Forskrifter angaaende Fremgangsmaaden ved Realisationen. Under Forudsætning af, at Konkursdekretet ikke er paaanket, tilkommer der den Panthaver, hvis Fordring ikke er forfalden, en lige Ret, saafremt det maa antages at være usikkert, om Pantet vil tilstrække til Dækning af hans Fordring, og om dets Bestyrelse vil medføre Underskud, som skal bæres af ham.

Ligeledes ville andre Rettigheder over Tingen, som formedelst deres sekundære Karakter i Overensstemmelse med den borgerlige Rets Regler blive at omsætte til Fordring paa en Del af den ved Tingens Bortsalg indvundne Kjobesum, være at fyldestgjøre gennem Realisationen ved Boet.

Hvad der maatte blive tilovers efter de heromhandlede Rettigheders Tilfredsstillelse, indgaar i Boets fælles Masse.

38. Forud for de i den foregaaende Paragraf nævnte Krav gaa, om fornødent: a) de i § 31 Litra a og i § 32 omhandlede Fordringer; — b) de i § 31 Litra b og c omhandlede Fordringer, forsaavidt de helt eller delvis vedkomme de behæftede Ting eller Rettigheder.

39. Forud for villiesbestemt Underpant i enkelte Løsoregjenstande gaa, om fornødent, de i § 33 nævnte Fordringer.

## II. Om Fremgangsmaaden ved Konkursboers Behandling.

### Kapitel VI. Om Konkursens Begyndelse.

40. Enhver, der tror sig ude af Stand til at fyldestgjøre sine Gjældsforpligtelser, kan fordre sit Bo taget under Konkursbehandling.

41. Naar Nogen undviger af Riget eller holder sig skjult, udenat hertil kan formodes anden Grund end Gjæld, skal Skifteretten, saasnart den dertil opfordres af nogen Fordringshaver, tage Skyldnerens Bo under Konkursbehandling, forsaavidt der er Grund til at befrygte, at Udsættelse hermed vilde komme hans Kreditorer til Skade.

Dersom Skifteretten finder Anledning hertil, kan den beskikke en god Mand, saavidt muligt blandt Skyldnerens Slægt eller Venner, til at afgive Erklæring, forinden Konkursbehandling besluttet.

holde sig til sit Pant og frafalde Fordring paa Boet i øvrigt. I saa Fald kan enhver saadan Pant-haver, hvis Fordring er forfalden, forfølge sin Panteret uafhængigt af Skiftebehandlingen, efter at han, for saa vidt han ikke allerede er Udlægshaver, har foretaget Udlæg i Pantet, hvortil han skal være berettiget uden Lovmaal eller Dom. Saa snart Udlæg saaledes er gjort, kan Boet fordre, at Udlægshaveren erstatter de af Boet paa Ejendommens Bestyrelse og Drift anvendte Udgifter og overtager den fremtidige Bestyrelse. Dersom Udlægshaveren ikke paa Anfordring indbetaler, hvad Boet saaledes har at fordre, eller dersom en Panthaver ikke inden 4 Uger efter Afgivelsen af den i første Punktum ommeldte Erklæring iværksætter Retsforfølgningen og fremmer Realisationen uden ufornødent Ophold, er Boet berettiget til at sætte Ejendommen til Tvangsauktion efter Reglerne i denne Lov, og bortfalder da Pant- eller Udlægshaverens Ret til selvstændig Forfølgning og til at fordre de paa Forfølgningen anvendte Omkostninger paa lagte Køberen. . . . .” I Sammenhæng hermed bestemmes i samme Lovs § 48: „For saa vidt der paa en af Boet rekvireret Tvangsauktion efter Buddets Beskaaffenhed ikke ndkommer noget Overskud til de personlige Kreditorer, og ingen af de Pantekreditorer, hvis Fordringer helt eller delvis vilde erholde Dækning ved Buddet, forlanger Bortsalg, bliver Auktionen at hæve, saafremt Panthaverne paa Boets Forlangende fra Auktionen at regne paa tage sig det fornødne med Hensyn til Ejendommens Bestyrelse og holde Boet fri for Udgifter i den Anledning. I saa Fald er enhver af de nævnte Panthavere, uden Hensyn til om hans Fordring ellers var forfalden og om han maatte have anmeldt den i Boet, berettiget til at forfølge sin Panteret i Ejendommen uafhængigt af Skiftebehandlingen, i hvilket Tilfælde den pantsatte Ejendom ikke medtages ved Beregning af Skiftegebyret, men Panthaverne anses da at have frafaldet Krav i Boet.“

ad § 40. Altsaa uden videre Undersøgelse af eller Bevis for hans Uvederhaftighed, og selv om nogen Kreditor protesterer mod Konkursen, men selvfølgelig ikke, hvis Skyldnerens Solvens konstateres. Skyldneren maa paa Forlangende kunne stille Sikkerhed i alt Fald for Omkostningerne ved de første Skridt i Konkursbehandlingen.

as immovables are concerned, when any mortgagee of the same whose claim is due demands it, without having regard to whether the decree of bankruptcy has been appealed against, shall take place without any other delay than that arising from the observance of the provisions of the law as to how the realisation has to be carried out. Provided that the decree of bankruptcy has not been appealed against, a pledgee or mortgagee whose claim is not due has an equal right in so far as it is uncertain whether the pledge or mortgage will be sufficient to cover his claim, and whether the administration of the bankruptcy will result in a deficit to be borne by him.

Similarly, other rights to an object, which, owing to their accessory nature, must, according to the provisions of the civil law, be converted into a claim on part of the amount realised by the sale of the object, must be discharged by means of the realisation carried out by the estate.

That which may remain when the rights here dealt with have been satisfied, belongs to the general assets of the estate.

38. The following have preference to the claims mentioned in the preceding Article, if necessary: a) The claims dealt with in § 31 letter a and in § 32; — b) The claims dealt with in § 31 letters b and c, in so far as they wholly or in part concern the objects or rights enumerated.

39. The claims mentioned in § 33 have preference, if necessary, to conventional mortgages (hypothecations) of particular movable objects.

## II. Bankruptcy procedure.

### Chapter VI. The commencement of the bankruptcy.

40. Any person who deems himself unable to pay his debts may claim that his property shall be administered in bankruptcy.

41. When any person leaves this Kingdom or conceals himself, without there being any other apparent reason than his debts for such absconding or concealment, the Bankruptcy Court, if requested to do so by any creditor, shall submit the estate of the debtor to bankruptcy proceedings, if there is any reason to fear that a postponement of the bankruptcy would be detrimental to his creditors.

If the Bankruptcy Court should find that there is any occasion to do so, it may select a reliable man, if possible from amongst the debtor's relatives or friends, to give his opinion on the matter before the bankruptcy proceedings are opened.

of his mortgage and renounce any further claim on the assets. In such case any such mortgagee whose claim is due, may pursue his mortgage right independently of the bankruptcy proceedings, after having, in so far as he is not already an execution creditor, effected a seizure of the mortgaged property, which he is entitled to do without any further proceedings or judgment. When such seizure has been effected, the estate may demand that the person seizing shall reimburse the expenses defrayed by the estate on the administration and exploitation of the property, and that he shall undertake its future administration. If, on request, the person seizing does not pay what the estate is entitled to demand, or if a mortgage creditor does not, within four weeks of making the declaration mentioned in the first sentence above, bring an action and further the realisation of the property without unnecessary delay, the estate is entitled to dispose of the property by way of a compulsory auction in accordance with the rules of this Act, and in such case the mortgage creditor or the person who has effected the seizure has no longer any right to bring an independent action and to demand that the expenses incurred owing to such action shall be defrayed by the purchaser....." In connection with this, § 48 of the same Act provides: "In so far as by a compulsory auction brought about by the estate, there does not result from the nature of the offers made, any excess in favour of the personal creditors, and if none of the mortgage creditors whose claims would wholly or partly be paid by means of such offers, demands that the sale of the property shall be effected, the auction shall be closed, provided that the mortgagees, at the request of the estate, to date from the day of the auction, undertake all that is necessary with regard to the administration of the property and indemnify the estate against expenses incurred on the occasion. In this case, each of the mortgage creditors, without having regard to whether his claim is due or not, or whether he ought to have presented it to the estate, is entitled to pursue his mortgage right on the property independently of the bankruptcy proceedings, in which case the mortgaged property is not included in the account of the bankruptcy expenses, but the mortgagees are then considered as having renounced their claims against the assets of the bankruptcy".

To § 40. Consequently without any further examination or proof of his insolvency, and even if any creditor raises an objection to his becoming bankrupt, but not of course, if the debtor's solvency is proved. The debtor, if requested to do so, is bound to give security at least for the costs of the opening of the bankruptcy proceedings.

42. Enhver, der har forfalden Fordring<sup>1)</sup>, som ikke behørig fyldestgjøres kan, forsaavidt Fordringen ikke er sikkert ved tilstrækkeligt Pant, forlange Skyldnerens Bo taget under Konkursbehandling, naar det ved Oplysninger, der ere fremkomne under Exekutions- eller Arrestforretninger, som Nogen hos ham har afholdt, eller ved Skyldnerens egen Erkjendelse eller andre Bevisligheder godtgjøres, at hans Bo er utilstrækkeligt til Betaling af hans Gjæld.

43. Naar Nogen, som er Handlende, Fabrikant eller Skibsrheder<sup>2)</sup> eller for ikke længere end 1 Aar siden har været i saadan Næringsvei, har standset sine Betalinger, har enhver Fordringshaver<sup>3)</sup>, saalænge Standsningen med Betalingen<sup>4)</sup> varer, Ret til at forlange Skyldnerens Bo taget under Konkursbehandling, udenat han behøver at fore andet eller videre Bevis for Skyldnerens Insolvents.

44. Naar Nogen af de i den foregaaende Paragraf nævnte Personer, efter gennem en Beskikkelse<sup>5)</sup> at være opfordret til at betale uimodsaagt eller bevist forfalden Gjæld, som ikke er sikkert ved tilstrækkeligt Pant, undlader at gjøre dette i mere end 14 Dage efter Beskikkelsen, kan den Fordringshaver, som har iværksat Paakravet, fordrø Boet taget under Konkursbehandling. Dog kan denne Ret ikke benyttes i længere Tid end 14 Dage efter Udlobet af den nævnte Frist.

45. Som Handlende anses i denne Lov Enhver, der om end kun i Foribndelse med anden Virksomhed, driver Handelsforretninger, derunder indbefattet Kommissionshandel, Assuranceagentur, Vexeller- og Bankforretninger saavel som Speditionsforretninger, forsaavidt han ifølge Lovgivningen er eller, hvis han boede i en Kjøbstad, vilde være forpligtet til at føre autoriserede Handelsbøger. Ved Skibsrhedere forstaas kun de, der drive Rhederi som Næringsvei, og ved Fabrikanter de, der drive Fabrikvirksomhed som Hovednæringsvei.

46. De i § 43, jfr. § 45, omhandlede Personer ere forpligtede til at erklære sig fallit, naar den aarlige Opgjørelse af deres Status i de 3 sidste Aar har viist en stadig Tilbagegang og Underbalancen udgjør 30 pCt. af Aktivmassen.

47. Den, der i Henhold til § 40 forlanger sit Bo taget under Konkursbehandling, skal derom indgive skriftlig Begjæring til Skifteretten, ledsaget af en af ham underskreven noiagtig Fortegnelse over hans Aktiver og Passiver med navnlig Angivelse af Kreditorerne samt over de Bøger, som maatte være forte i hans Forretning. Kan Fortegnelsen ikke strax medfølge Begjæringen, har Skyldneren i denne at opgive Grunden hertil samt derefter snarest mulig at indlevere den. Saadan Fortegnelse har Skyldneren ogsaa paa Forlangende at afgive til Skifteretten, saasnart hans Bo efter nogen Fordringshavers Begjæring er taget under Konkursbehandling.

48. Naar en Fordringshaver i Henhold til §§ 42, 43 eller 44 forlanger sin Skyldners Bo taget under Konkursbehandling, indgiver han derom til Skifteretten skriftlig Begjæring, som bør indeholde Angivelse af de Omstændigheder, hvorpaa Forlangendet grundes.

Skifteretten har derefter at beramme et Møde, der saavidt muligt skal holdes inden 48 Timer, og med et af den bestemt Varsel dertil at indkalde Skyldneren saavel som vedkommende Fordringshaver, hvorpaa der i selve Mødet eller dog

<sup>1)</sup> Er Fordringen ikke bevist eller uimodsaagt, kan Konkurs dog besluttes mod Sikkerhedsstillelse, naar der er overvejende Sandsynlighed for Kravets Righed. Det samme gælder med Hensyn til de to andre i Paragraffen angivne Betingelser. — <sup>2)</sup> Se § 45. — <sup>3)</sup> Altsaa selv om hans Fordring ikke er forfalden, og selv om han har tilstrækkeligt Pant, medmindre han da er Haandpanthaver eller Udlægshaver. — <sup>4)</sup> Betalingsstandsning maa ordentligvis forstaas som en almindelig Undladelse fra Skyldneres Side af at efterkomme sine Gældsforpligtelser, men Begrebet udelukkes dog ikke nødvendigvis ved, at enkelte mindre Gældsposter dækkes. — <sup>5)</sup> Herved forstaas en ved Notarius publicus eller to gode Mænd til Skyldneren rettet mundtlig Opfordring til at betale.

ad §§ 40—44. For Sparekasser gælder ifølge Sparekasseloven Nr. 64 af 28 Maj 1880 § 8 den særlige Regel, at den Sparekasse, der har et saadant Underskud, at der mangler Dækning for 5 pCt. af Indskydernes Tilgodehavende, skal kunne overgives til Konkursbehandling, medmindre Bestyrelsen stiller en af Indenrigsministeriet godkendt Sikkerhed.

ad § 46. Undladelse af at opfylde denne Forpligtelse til at erklære sig fallit medfører Tab af Adgangen til at opnaa Tvangsakkord under Konkursbehandling, se § 101g.

42. Any person having a claim<sup>1)</sup> which is due, and which is not paid according to agreement, provided he has no sufficient security for such claim, may demand that the debtor's estate shall be administered in bankruptcy, if by means of information resulting from a seizure or an arrest effected on his property, or by means of the debtor's own avowal or other facts, it is proved that his estate is insufficient for payment of his debts.

43. If a person who is a trader, manufacturer or shipowner<sup>2)</sup>, or who has within the previous year pursued one of these professions, has suspended his payments, any creditor<sup>3)</sup>, so long as the suspension of payments<sup>4)</sup> lasts, has a right to demand that the debtor's estate shall be administered in bankruptcy, without being under any further obligation to prove the debtor's insolvency.

44. If any one of the persons mentioned in the preceding Article, after having been formally summoned<sup>5)</sup> to pay an uncontested debt, or one which is proved to be due, but not guaranteed by way of a sufficient pledge, omits to make such payment for more than a fortnight after the summons, the creditor who has brought about such summons may claim that the estate be administered in bankruptcy. This right, however, cannot be exercised during more than a fortnight after the expiration of the period mentioned.

45. Any person who, even when only in connection with some other operation, carries on commercial operations, including commercial commission agency, insurance agency, the business of money changing and banking, as well as forwarding agency, provided that according to law, he is, or if he lived in a town would be, liable to keep authorised commercial books, is considered a trader within the meaning of this Act. Only such persons are considered to be shipowners who carry on the business of shipowners as a trade, and manufacturers, persons whose principal trade is to manufacture goods.

46. The persons mentioned in § 43 (see § 45) are bound to declare themselves bankrupt, when their annual balance-sheet has shown a continual decrease of their assets during the preceding three years, and the deficit amounts to 30 per cent. of such assets.

47. Any person who, in conformity with § 40, requests that his estate shall be administered in bankruptcy, must send a written declaration to the Bankruptcy Court to this effect, accompanied by an exact statement, signed by him, of his assets and debts and the names of his creditors, and of such books as may have been kept in his business. If the statement cannot be sent immediately with the declaration, the debtor must in the latter give the reason for the delay, and as soon as possible forward the statement to the Court. If requested, the debtor is also bound to hand in to the Bankruptcy Court a similar statement, when his estate has been ordered to be administered in bankruptcy at the request of any creditor.

48. When a creditor, in conformity with §§ 42, 43 or 44, requests that his debtor's estate shall be administered in bankruptcy, he shall send to the Bankruptcy Court a request in writing to this effect, containing the particulars of the circumstances on which such request is based.

The Bankruptcy Court shall in the next place convene a meeting which, if possible, shall be held within forty-eight hours, and subject to a period fixed by the Court, shall summon the debtor as well as the interested creditors to the same meeting;

1) If the claim is not proved or if it is contested, bankruptcy can nevertheless be declared on security being given when it is pre-eminently probable that the claim is valid. The same rule applies to the two other provisions of the Act. — 2) See § 45. — 3) Consequently, even when his claim is not due, and even if he has a sufficient pledge, unless he is a mortgagee or a creditor who has effected a seizure. — 4) By a suspension of payments must as a general rule be understood a general omission on the part of the debtor to fulfil his liabilities, but the term is not necessarily excluded owing to the fact that particular minor debts have been paid. — 5) This is understood as meaning an oral invitation to make payment, presented to the debtor by a notary public or two reliable men.

To §§ 40—44. In regard to savings banks, according to the Savings Banks Act No. 64 of 28 May 1880, § 8, the special rule applies that a savings bank having such a deficit as to be unable to pay 5 per cent. of what is due to the depositors, shall be declared bankrupt, unless its directors procure a security recognised by the Ministry of the Interior.

To § 46. An omission to comply with the obligation of declaring himself bankrupt, entails for the debtor the loss of the right to obtain a composition during the bankruptcy proceedings; see § 101g.

snarest mulig tages Beslutning, om Fordringshaverens Begjæring mod eller uden Sikkerhedsstillelse skal tages til Følge eller ikke<sup>1</sup>.

Skifteretten er berettiget til at afiske Skyldneren de i saa Henseende fornødne Erklæringer. Negter denne Svar paa Skifterettens Spørgsmaal, eller udebliver han uden gyldigt Forfald, kan han behandles som den, der ikke drister sig til at modsige Fordringshaverens Opgivelser.

49. Naar Konkursbehandling ved Skifterettens Kjendelse er besluttet, bliver Udførelsen af denne Beslutning ikke opholdt ved Paaanke.

Dog bor der, naar Paaanke finder Sted, ikke, forinden endelig Dom er falden, foregaa noget Salg af Boets Eiendele, der ikke er en Følge af Gjenstandenes Beskaffenhed eller Skyldnerens Næringsvei, medmindre Skyldneren samtykker deri.

50. (Som ændret ved Lov Nr. 66 af 15 April 1887).

Konkursen anses, forsaavidt Skifteretten tager Beslutning om, at Konkursbehandling skal finde Sted, som begyndt fra det Oieblik af, da Skyldnerens Begjæring om eller en Fordringshavers Opfordring til eller Forlangende om at tage Boet under Behandling som konkurs er indgiven til Skifteretten. Efter at Konkursen er begyndt, staar det ikke den eller dem, der have begjært Konkursbehandling, aabent at lade den bortfalde; derimod er Skifteretten, naar Konkursen alene er fremkaldt ved Skyldnerens egen Begjæring, og han, forinden Indkaldelse af Kreditorerne efter § 84 har fundet Sted, gjør det antageligt, at han er i Stand til at fyldestgjøre sine Kreditorer, berettiget til at hæve den tidligere afgivne Kjendelse om Boets Overtagelse til Konkursbehandling, for saa vidt de modte Kreditorer ikke modsætte sig dette. Naar Konkursbehandling saaledes bortfalder, bor dette, forsaavidt offentlig Bekjendtgjørelse har fundet Sted om Konkursens Begyndelse (§ 52), uden Ophold bekjendtgjøres paa lige Maade.

## Kapitel VII. De første Foranstaltninger ved Konkursboets Behandling.

51. Strax efter Konkursens Begyndelse skal der afholdes en Begyndelsesforretning, under hvilken Skifteretten ved Forsegling eller paa anden hensigtsvarende Maade har at tage Boet og særlig Fallentens Handelsbøger under sin Varetægt, ligesom den har at drage Omsorg for, at de Boet tilhørende Gjenstande, som findes i andre Retskredse, tages under Forsegling eller anden Varetægt af Stedets Skifteret.

Denne Forretning ere Fordringshaverne berettigede til at overvære, ligesom de kunne fremsætte deres Bemærkninger til Protokollen.

52. Skifteretten har uopholdelig at drage Omsorg for, at en offentlig Bekjendtgjørelse om Konkursboets Overtagelse indrykkes i de for Skiftebekjendtgjørelser i Almindelighed bestemte Aviser<sup>2</sup>, saavel som at den fornødne Thinglæsning finder Sted ved de Jurisdiktioner, under hvilke Boets faste Eiendomme ere beliggende.

Bekjendtgjørelsen i Aviserne skal foruden Underretning om, at Boet er taget under Konkursbehandling, indeholde: a) Tilkjendegivelse om, at der til en opgiven Tid paa den tredie eller fjerde Sognedag efter Bekjendtgjørelsens Datum vil i Nærværelse af og efter Samraad med de modte Fordringshavere af Skifteretten blive taget Bestemmelse om Ansættelsen af en midlertidig Bestyrer samt om Registreringens Foretagelse; — b) Berømmelse af en Skiftesamling til en Tid, ikke tidligere end 14 Dage og ikke senere end 3 Uger efter Bekjendtgjørelsens Datum, med navnlig Angivelse af de Gjenstande, som i Medfør af denne Lov, særlig §§ 66, 68 og 70, ville blive at forhandle.

Skifterettens Pligt at meddele visse Fordringshavere særlig Underretning om Konkursbehandlingen vedbliver fremdeles ligesom hidtil.

53. Skjenner Skifteretten, at Valget af midlertidig Bestyrer ikke uden Fare for Boet kan udsættes saa længe, som i foregaaende Paragraf er bestemt, er den berettiget til forinden at ansætte en saadan, efter saavidt mulig derom at have

<sup>1</sup>) Hvis Skifterettens Beslutning herom gøres til Genstand for Appel, gaar saadan Appel lige til Højesteret, jvf. § 140. — <sup>2</sup>) D. v. s. „Statstidende“ jvf. Lov Nr. 10 af 23 Januar 1903.

ad § 53, 1ste St. I Praxis ansætter Skifteretten gerne en midlertidig Bestyrer strax efter Konkursens Begyndelse.



at this meeting, or in any case as soon as possible thereafter, it shall be decided whether the creditor's request shall be granted with or without security<sup>1</sup>).

The Bankruptcy Court is authorised to require of the debtor in this connection all the necessary statements. If he refuses to reply to the questions of the Court, or if he is absent without sufficient reason, he may be treated as if unable to contradict the creditor's allegations.

**49.** When the commencement of the bankruptcy has been decided on by the Bankruptcy Court, the carrying out of such decision cannot be delayed by way of appeal.

In case of appeal, however, no sale of the assets of the estate which is not a consequence of the nature of the objects or of the debtor's trade may take place before final judgment is given, unless the debtor gives his consent to such sale.

**50.** (As modified by Act No. 66 of 15 April 1887.)

If the Bankruptcy Court decides that a bankruptcy shall be declared, it is considered as having commenced from the time when the debtor demanded or a creditor requested that the estate in question should be administered in bankruptcy. When a bankruptcy has commenced, that person or those persons who requested the declaration of bankruptcy are not entitled to suspend the proceedings; on the other hand, when a bankruptcy has only been declared at the debtor's own request and, before the creditors have been convened in accordance with § 84, he makes it appear probable that he is able to pay his creditors, the Bankruptcy Court is entitled to cancel its previous decision regarding the administration of the estate in bankruptcy provided that the convened creditors do not object to such a course. When bankruptcy proceedings have been suspended in this manner, such suspension, in so far as the declaration of the bankruptcy has been made known in public (§ 52), shall be published in a similar manner without delay.

## **Chapter VII. The first measures of the proceedings in bankruptcy.**

**51.** Immediately after the declaration of bankruptcy, a preliminary measure takes place, in the course of which the Bankruptcy Court, by sealing or in some other appropriate manner, takes charge of the estate and especially of the bankrupt's commercial books; the Court also has to see that objects belonging to the estate which are found to be in other jurisdictions, are sealed or placed in the charge of the Bankruptcy Court of the jurisdiction in question.

The creditors are entitled to be present when this measure is carried out, and they may make suggestions, which are taken down in writing by the Court.

**52.** The Bankruptcy Court shall, without delay, see that the declaration of the bankruptcy is published in the newspapers<sup>2</sup>) generally made use of in the case of publications regarding bankruptcies and inheritances, and that the necessary public proclamations are made in those jurisdictions in which the immovables of the bankruptcy are situated.

The publication in the newspapers shall contain, in addition to information as to the estate having been submitted to administration in bankruptcy: — a) An intimation to the effect that, at a definite hour on the third or fourth business day after the date of the publication, in the presence of and after consultation with the creditors who were present at the preliminary meeting, the Bankruptcy Court will decide as to the appointment of a provisional administrator and the necessary inventory; — b) The convening of a meeting of the creditors at a time not later than three weeks after the date of the publication, with an indication of the particulars of the matters which, according to this Act, especially §§ 66, 68 and 70, will have to be dealt with.

The obligation of the Bankruptcy Court to give certain creditors special information regarding the bankruptcy proceedings, will still apply as heretofore.

**53.** If the Bankruptcy Court finds that the appointment of a provisional administrator cannot be postponed without detriment to the estate, for as long as is mentioned in the preceding Article, it is authorised to appoint one before that day

<sup>1</sup>) If the decision of the Bankruptcy Court is appealed against, such appeal may be brought before the Supreme Court; see § 140. — <sup>2</sup>) I.e. "The Official Gazette": see Act No. 10 of 23 January 1903.

*To § 53, 1st par.* In practice the Bankruptcy Court as a rule appoints a temporary administrator immediately after the commencement of the proceedings.

raadført sig med de Fordringshavere, der have givet Mode under Begyndelsesforretningen. Den midlertidige Bestyrer skal være en uberygtet, vederhæftig, forretningskyndig Mand og maa ikke være Skyldnerens Ægtefælle eller saa nær som Søskendebarn beslægtet eller besvogret med Skyldneren, ei heller staa i Tjenesteforhold til Skifteretten eller dennes enkelte Medlemmer; at Nogen er Kreditor i Boet, er ikke til Hinder for, at han kan ansættes som midlertidig Bestyrer.

Ligeledes er Skifteretten berettiget til at foretage Registreringen strax, naar denne ikke uden Skade for Boet kan udsættes.

54. Skifteretten skal til fastsat Tid foretage Registrering af Boet og i Forbindelse hermed lade iværksætte Vurdering.

Ved Registreringen skal den midlertidige Bestyrer være tilstede og paase efter bedste Evne, at Intet forbigaa, ligesom Fordringshaverne ere berettigede til at være tilstede og fremsætte deres Bemærkninger ved Forretningen.

Skyldneren er pligtig paa Skifterettens Forlangende at give Mode under Registreringen og at meddele alle fornødne Oplysninger.

55. Den midlertidige Bestyrer har, saavidt muligt, uopholdelig ved anbefalet Brev at tilstille samtlige paa den Tid bekendte, saavel udenrigske som indenrigske, Fordringshavere eller deres bekendte Kommissionærer paa Stedet Gjenpart af den i § 52 nævnte Bekjendtgjørelse, dog udenat der paa Undladelse heraf kan bygges nogen Indsigelse mod Gyldigheden af, hvad der i Skiftesamlingen maatte forhandles eller besluttes.

56. Skifteretten kan, efter at have raadført sig med den midlertidige Bestyrer og, saavidt der hertil er Anledning, de paa Stedet værende til den Tid bekendte Fordringshavere, beslutte, at Skyldnerens Forretninger enten i det Hele eller for enkelte Forretningsgrenes Vedkommende skulle fortsættes for Boets Regning inden de Grændser, som Lovgivningen tillader, dersom en pludselig Standsning vilde paaføre Boet betydelig Skade. Besluttet midlertidig Forsættelse af Forretningerne, tager Skifteretten, efter at have raadført sig, som ovenfor er sagt, Bestemmelse om, hvorledes der skal forholdes med Forretningernes Forløb.

57. Naar Nødvendigheden kræver, at der hurtig maa tages Beslutninger, som gaa ud over en blot midlertidig Bestyrelse af Boet, har den midlertidige Bestyrer at indhente Skifterettens Bestemmelse. Forinden denne meddeles, har Skifteretten, forsaavidt Tiden tillader det, først at høre de paa Stedet værende, til den Tid bekendte Fordringshavere.

Den midlertidige Bestyrer er i det Hele undergiven Skifteretten i Henseende til Boets Behandling. Han har at aflægge Regnskab til Skifteretten, naar hans Hverv er tilende, enten fordi der er beskikket en Kurator, eller fordi det besluttes, at ingen saadan skal beskikkes.

58. Naar Skyldneren ikke ved Konkursens Begyndelse eller i Løbet af eet Aar forinden har været i saadan Næringsvei eller Stilling, som i § 43, jfr. § 45, er nævnt, eller Skifteretten antager, at særegne Stedforhold ere til Hinder for Anvendelsen af den Fremgangsmaade med Beskikkelse af midlertidig Bestyrer, Kurator og Kreditorudvalg, som ellers i denne Lov foreskrives, eller at Boets Tilstand gjør saadan Fremgangsmaade ufornoden, kan Skifteretten i det ifølge § 52 Litra a bestemte Mode, efter at have hørt de tilstedeværende Fordringshavere, bestemme, at ingen midlertidig Bestyrer skal beskikkes; Skifteretten har i saa Fald at udføre, hvad der ifølge denne Lov paahviler den midlertidige Bestyrer.

## Kapitel VIII. Om Skiftesamlinger i Almindelighed.

59. Alle Skiftesamlinger, om hvilke der ikke er givet særlige Regler i denne Lov, tillyses ved en Bekjendtgjørelse fra Skifteretten i de for Skiftetbekjendtgjørelser i Almindelighed bestemte Aviser<sup>1)</sup>; Varslet, der dog ikke bør overstige 14 Dage, saavel som Tiden og Stedet for Skiftesamlingens Afholdelse bestemmes af Skifteretten.

<sup>1)</sup> Se Note til § 52.

after having as far as possible consulted the creditors who appeared at the preliminary meeting with regard to this point. The provisional administrator must have a clean record, be a reliable man who has knowledge of this kind of business, and must not be the debtor's spouse, or so nearly related as cousin or brother-in-law, nor be in the employ of the Bankruptcy Court or any of its individual members. The fact that a person is a creditor of the estate does not prevent him from being appointed as a provisional administrator.

The Bankruptcy Court is also authorised to proceed with the inventory forthwith, when this measure cannot be delayed without detriment to the estate.

**54.** The Bankruptcy Court, at the stipulated time, must proceed with the inventory of the estate, and in connection therewith make an estimate of its assets and liabilities.

The provisional administrator shall be present while the inventory is proceeded with, in order to see to the best of his abilities that nothing is overlooked, and the creditors are also entitled to be present and make their remarks on the matter.

At the request of the Bankruptcy Court, the debtor is bound to appear and give the necessary information while the particulars of his estate are being taken.

**55.** The provisional administrator must, as far as possible, without delay, send copies by means of registered letters, of the publication mentioned in § 52, to the creditors who are known at the time, both in the Kingdom and abroad, or to their known representatives resident at the place in question. No exception can, however, be taken to the validity of what the meeting of the creditors may discuss or decide, by reason of the omission to send such information.

**56.** The Bankruptcy Court, after having consulted the provisional administrator, and, in so far as there is any opportunity to do so, the creditors who are known to be at the place at the time, may decide that the debtor's business in its entirety or particular branches of it, shall be continued for the account of the estate within the limits allowed according to law, if a sudden interruption would be detrimental in a considerable degree to the estate. If, however, the continuation of the business is decided on, the Bankruptcy Court, after having taken advice as above indicated, must decide as to how the business is to be carried on.

**57.** If the circumstances require that some point of importance shall be decided which goes beyond the scope of a temporary administration of the estate, the provisional administrator must consult the Bankruptcy Court. Before giving its opinion, the Court, if time permits, must first hear the opinion of the creditors who at that time are known to be present at the place.

The provisional administrator is entirely in the hands of the Bankruptcy Court in regard to the administration of the estate. When his mission is at an end, either because a trustee has been appointed, or because it has been decided that no trustee shall be appointed, he has to give the Court an account.

**58.** If the debtor, at the commencement of the bankruptcy, or in the course of the preceding year, has not carried on such a trade or been in such a position as is mentioned in § 43 (§ see 45), or if the Bankruptcy Court is of opinion that special local circumstances prevent the adoption of the procedure as to the appointment of a provisional administrator, of a trustee and of a committee of the creditors as otherwise prescribed by this Act, or if the state of the bankruptcy renders such proceeding unnecessary, the Bankruptcy Court, at the meeting convened according to § 52 letter a, after having heard the opinion of the creditors present, may decide that no provisional administrator shall be appointed; in such case, the Bankruptcy Court shall carry out that which, according to this Act, is incumbent on the provisional administrator.

### Chapter VIII. Meetings of creditors in general.

**59.** All meetings of creditors as to which the present Act provides no special rule, are convened by means of a publication inserted by the Bankruptcy Court in the newspapers<sup>1)</sup> generally made use of in the case of publications relating to bankruptcies and inheritances; the period within which the meeting is convened, which, however, must not exceed a fortnight, as well as the time and place where the meeting is to take place, are decided by the Bankruptcy Court.

<sup>1)</sup> See note to § 52.

Nødvendigheden af offentlig Bekjendtgjørelse bortfalder, dersom Skifteretten foretrækker at give dem, der skulle tilkaldes, særlig personlig Underretning, hvilken kan meddeles paa den Maade, Skifteretten i hvert enkelt Tilfælde anser for hensigtsmæssig; det er den tilladt at benytte Meddelelse ved anbefalet Brev.

60. Skifteretten har Forsædet i Skiftesamlingerne samt leder og styrer Forhandlingerne og drager Omsorg for, at fornøden Protokoltilførsel finder Sted angaaende det Stedfundne.

61. Reises der Tvivl om, hvorvidt Nogen, der som Fordringshaver møder i en Skiftesamling, forinden Fordringerne ere prøvede, bør erkjendes som saadan, har Skifteretten ved at høre Skyldneren, efterse Boets Boger og Papirer eller ved at benytte andre Oplysninger, som paa Forhaand kunne have, at afgjøre, hvorvidt og for hvilket Beløb den Mødende kan stedes til Stemme. Denne Afgjørelse er uden Indflydelse paa den senere Prøvelse af hans Fordring.

62. Eies en Fordring af Flere i Forening, giver den dog ikke flere Stemmer, end om den eiedes af Een.

Betingede Fordringer give Stemme, selv om Betingelsen for Fordringens Opstaaen ikke er indtraadt. Dog kan, forsaavidt Fordringen tilkommer Flere, kun Een af dem og da navnlig den, der for Tiden maa anses for den nærmest berettigede Kreditor, afgive Stemme. Forloveren har saaledes ingen Stemme, førend han har udløst Hovedkreditor og derved er traadt i dennes Sted, og, hvor Varer ere solgte mod Vexel paa Trediemand under Forbehold af sammes rigtige Accept, er Sælgeren, indtil denne har fundet Sted, men derefter Vexelacceptanten den stemmeberettigede Repræsentant for Fordringen.

63. De Kreditorer, som ikke have nogen Interesse i de Spørgsmaal, der foreligge til Afgjørelse, saasom fordi de ville faae fuld Dækning, hvorledes Spørgsmaalet end afgjøres, eller fordi de ikke kunne vente at faae nogen Dækning, hvorledes det end afgjøres, have ingen Stemmeret.

64. Den paa Skiftesamlingen tagne Beslutning bliver at følge ved Boets Behandling, naar den er vedtagen med en Flerhed af Stemmer, der baade efter Tal og Vægt svarer til over Halvdelen af samtlige bekjendte eller, forsaavidt Anmeldelsesfristen er udloben, anmeldte Fordringshaveres Krav<sup>1)</sup>. Opnaas en saadan Flerhed af Stemmer ikke, og beslutter Skifteretten ikke efter derom fremsat Ønske af mødende Fordringshavere at indkalde en ny Skiftesamling for at forsøge, om der ikke paa denne kan tilveiebringes den fornødne Flerhed af Stemmer, anses Fordringshaverne for at have overladt Afgjørelsen af det omspurgte Anliggende til Kurator og Kreditorudvalget, saaledes som disse derfor ville være ansvarlige (jfr. § 74).

Saalænge den for Fordringernes Anmeldelse fastsatte Frist ikke endnu er udloben, har Skifteretten at paase, at Beslutninger af Skiftesamlingen ikke stride imod endnu ikke anmeldte Kreditors Interesse. Til dette Øiemed kan den tilside-sætte saadanne Beslutninger og i fornødent Fald selv træffe Bestemmelse om Spørgsmaalets Afgjørelse.

Ligesom Flertallet i en Skiftesamling selvfølgelig Intet kan bestemme, som strider imod særlige Rettigheder, der tilkomme Kreditorer, navnlig Panthavere og privilegerede Fordringshavere, saaledes kan det heller ikke retsgyldigen fatte Beslutninger, som staa i Strid med Konkursbehandlingsens retlige Øiemed, saasom ved ufornødent at forhale Boets Opgjørelse eller ved at bortgive dets Eiendele<sup>2)</sup> eller Deslige, hvorimod Skifteretten, naar det begjæres af nogen deri Interesseret, har at sætte saadanne Beslutninger ud af Kraft og anordne, hvad derefter retlig maatte være fornødent.

65. Naar Kurator eller Kreditorudvalget finder, at Fordringshavernes Beslutning udenfor de i denne Lov særlig bestemte Tilfælde bør indhentes om nogen Del af Boets Forvaltning, skal Skifteretten paa Anmodning sammenkalde en Skifte-

<sup>1)</sup> Mødens den her givne Regel om, hvad der kræves til en gyldig Flertalsbeslutning paa en Skiftesamling, er Hovedreglen, gælder dog derfra afvigende Regler i visse særlige Tilfælde, jvf. saaledes f. Ex. p. d. e. S. med Hensyn til Valg af Kurator og Kreditorudvalg § 66, 2 St., § 67 og § 68 1 og 5 St., og p. d. a. S. med Hensyn til Tvangsakkord og Skiftekommissarier § 108 og § 147. — <sup>2)</sup> Jvf. dog om Understøttelse til Fallenten § 83.

No such publication is necessary if the Bankruptcy Court prefers to give notice in person to those who are to be convened; such notice may be sent in the manner which the Bankruptcy Court in each particular case considers most convenient; the Court for this purpose is authorised to register its letters.

**60.** The Bankruptcy Court presides over the meetings of creditors, directs their deliberations and sees that the proceedings are taken down in writing as required.

**61.** If any doubt is raised as to whether any person appearing at the meetings of creditors in his capacity as a creditor, before the claims have been verified, ought to be recognised as such, the Bankruptcy Court, by hearing the debtor, inquiring into the books and papers of the estate, or by resorting to other means of information which may be obtained beforehand, has to decide whether and for what amount the creditor in question shall be entitled to vote. Such a decision does not affect any subsequent examination of the claim.

**62.** If several persons are joint proprietors of a claim, this does not give a right to more votes than if it were owned by one person only.

Conditional claims give a right to vote, even if the condition on which the claim is based has not been fulfilled. In the case, however, of the claim belonging to several persons, only one of them, and in particular the one who at the time must be considered as being the most interested creditor, may vote. Consequently, a surety is not entitled to vote until he has paid the principal creditor and by doing so has taken his place, and in cases where merchandise has been sold against bills of exchange drawn on third persons on condition that they are duly accepted, the seller, until acceptance has been given, but after this, the acceptor of the bill of exchange in question, is the representative of the claim entitled to vote.

**63.** Creditors who are not interested in the questions submitted to a meeting for decision, either because in any case they will obtain full payment, or because they do not expect to obtain any payment at all, have no right to vote.

**64.** The decision come to at a meeting of creditors must be followed in the administration of the estate when carried by a majority of the votes exceeding both in number and importance half of all known creditors or, provided the period for the presentation of claims has expired, of all presented claims<sup>1</sup>). If such a majority of votes is not obtained, and if the Bankruptcy Court, after a request to this effect has been made by the creditors present, does not decide to convene another meeting of creditors in order to try whether at this meeting the necessary majority of votes can be obtained, the creditors are considered as having left the settlement of the point in question to the trustee and the committee of creditors, to the extent to which the latter are willing to take upon themselves the responsibility in the matter (§ 74).

As long as the period fixed for the presentation of claims has not yet expired, the Bankruptcy Court has to see that the decisions carried by the meeting of creditors are not contrary to the interests of creditors who have not yet presented their claims. With this point in view the Court may ignore such decisions, and, if necessary, settle the point in question itself.

As the majority of a meeting of creditors may of course decide nothing which is contrary to the special rights of creditors, in particular of pledge-holders and privileged creditors, similarly it cannot legally come to decisions contrary to the legal scope of the bankruptcy proceedings, for example, by unduly prolonging the distribution of the estate, or by giving away its property<sup>2</sup>) etc.; the Bankruptcy Court, at the request of any interested person, must declare such decisions null and void, and give its instructions as to what may further be necessary according to law.

**65.** When the trustee or the committee of creditors finds that the decision of the creditors, outside the cases specially mentioned in this Act, ought to be obtained with regard to any part of the administration of the estate, the Bankruptcy Court,

<sup>1</sup>) Whereas the rule here given as to what majority is required to carry a valid decision at a meeting of creditors is the main rule, exceptional rules obtain in certain special cases: see for example, in the first place with regard to the choice of trustees and creditors' committees, § 66, paragraph 3, § 67 and 68, paragraphs 1 and 5, and on the other hand, with regard to composition and commissaries of bankruptcies, § 108 and § 147. — <sup>2</sup>) See, however, with regard to assistance to the bankrupt, § 83.

samling. Ogsaa paa Andragende af en Fordringshaver eller af Skyldneren saavel som af egen Drift kan Skifteretten sammenkalde en Skiftesamling, naar hertil skjønnes at være tilstrækkelig Grund.

## Kapitel IX. Om Kurators Antagelse og Retsstilling samt om Kreditorudvalget.

66. I den i § 52 Litra b omhandlede Skiftesamling har Skifteretten at opfordre til ved Afstemning af de mødende Fordringshavere uden Hensyn til Fordringernes Størrelse at bestemme, om en Kurator skal beskikkes eller ikke.

Beslutes det ikke at beskikke nogen Kurator, bliver Boet at behandle af Skifteretten selv (§ 80). Beslutes det, at Kurator skal beskikkes, har Skifteretten at opfordre de mødende Fordringshavere til at skride til Valget af en saadan.

Dersom ved den foretagne Afstemning over Halvdelen af de afgivne Stemmer uden Hensyn til Fordringernes Størrelse falder paa den samme Person, bliver han at beskikke, medmindre Skifteretten maatte finde Grund til at negte sin Billigelse. Forkaster Skifteretten Valget, bør Retten dog give de tilstedeværende Fordringshavere Leilighed til at foretage et nyt Valg, som da bliver at godkjende, forsaavidt ikke særlige Grunde tale derimod.

I det Tilfælde, at det gjorte Valg endelig forkastes, saavel som naar Ingen opnaar over Halvdelen af de afgivne Stemmer, vælger Skifteretten Kurator.

Udeblive saa mange Fordringshavere i den heromhandlede Skiftesamling, at ikke idetmindste en Trediedel af samtlige bekjendte Fordringer paa Boet er repræsenteret ved Afstemningen, anses Fordringshaverne for at have overladt det til Skifteretten at bestemme, om en Kurator skal beskikkes, saavel som i bekræftende Fald at vælge en saadan.

For at kunne vælges til Kurator udkræves de samme Betingelser som i § 53 med Hensyn til den midlertidige Bestyrer bestemt; hvis en saadan har været beskikket, kan han vælges til Kurator.

67. Naar der herfor er en Stemmeflerhed af over Halvdelen af de afgivne Stemmer, uden Hensyn til Fordringernes Størrelse, kan der beskikkes flere Kuratorer, som under fælles Ansvar bestyre Boet. De fordele selv Forretningerne mellem sig, saafremt Fordringshaverne ikke have bestemt Fordelingen. Den først Valgte af Kuratorerne skal være Opmand, dersom Fordringshaverne ikke have taget anden Bestemmelse.

Hvad der i denne Lov bestemmes om Kurator, gjælder i saa Fald om Kuratorerne.

68. Efterat Kurator er valgt, skal der af de mødende Fordringshavere efter de fleste Stemmer, uden Hensyn til deres Fordringers Størrelse, blandt de bekjendte Fordringshavere eller deres Befuldmægtigede vælges et Udvalg paa 3 Personer, hvilke skulle have Indseende med Kurators Bestyrelse og i vigtigere Tilfælde tilkaldes for at deltage i Beslutningerne om Boets Anliggender.

I det i § 66, næstsidste Stykke, omtalte Tilfælde vælger Skifteretten foruden Kurator ogsaa Medlemmerne af Kreditorudvalget. Det Samme gjælder, hvis de Valgte undslaa sig for at overtage det dem tildelte Hverv og et nyt Valg, foretaget i samme eller en anden snarest mulig derefter afholdt Skiftesamling, ei heller fører til noget Resultat.

De Valgte erholde ingen Godtgjørelse, men alene Erstatning af Reisendgifter og havte Udleg, og Enhver af dem kan i en særlig dertil indvarslet Skiftesamling afskediges af Flertallet af de Mødende, hvorefter nyt Valg foregaar.

Naar det senere befindes, at en Fordringshaver, der er Medlem af Udvalget, ikke virkelig har Noget tilgode hos Boet, bliver han ligeledes at afskedige af Skifteretten, og nyt Valg foregaar paa den ovenfor bestemte Maade.

Naar flere Kuratorer vælges i Henhold til § 67, kunne Fordringshaverne med den der angivne Stemmeflerhed vedtage, at intet Kreditorudvalg skal nedsættes. De Forretninger, som ifølge denne Lov udføres af Kreditorudvalget, tilfalde da Skifteretten.

if requested, has to convene a meeting of creditors. Also, when requested by a creditor or by the debtor, as well as of its own motion, the Bankruptcy Court is entitled to convene a meeting of creditors, if sufficient reason is considered to exist for such a course.

## **Chapter IX. The appointment and judicial position of the trustee, and the committee of creditors.**

**66.** At the meeting of creditors mentioned in § 52 letter b, the Bankruptcy Court must call upon the creditors who are present, without having regard to the amount of their claims, to decide whether a trustee shall be appointed or not.

If the meeting decides that no trustee shall be appointed, the Bankruptcy Court itself has to conduct the administration of the estate (§ 80). If it decides that a trustee shall be appointed, the Bankruptcy Court must call upon the creditors who are present to proceed to the election of such an official.

If at the election more than half of the votes, without having regard to the amount of their claims, are cast in favour of the same person, he will be appointed, unless the Bankruptcy Court should have any reason to refuse its approval of the choice. If the Court refuses its approval, the creditors present shall be given the opportunity of making another selection, which the Court must approve, unless there are special reasons for disapproval.

In case the selection made is finally rejected, as well as when no person obtains more than half the votes given, the Bankruptcy Court appoints a trustee.

If at the meeting of creditors here referred to, so many creditors are absent that less than a third of all known claims on the estate are represented when the votes are cast, the creditors are considered as having left it to the Bankruptcy Court to decide whether a trustee shall be appointed, as well as in case of the affirmative to appoint such an official.

In order to be appointed as a trustee, the same conditions are required as those prescribed by § 53 with regard to the provisional administrator; if such an official has been chosen, he may be appointed as trustee.

**67.** If a majority of more than half the votes cast are in favour of such a course, without having regard to the amount of the claims, several trustees may be appointed, who are jointly responsible for the administration of the estate. They themselves distribute the business between them, unless the creditors have already decided as to such distribution. The trustee who has first been chosen shall act as umpire, if the creditors have not decided to the contrary.

The provisions of this Act regarding a sole trustee also apply in cases where several trustees are appointed.

**68.** When a trustee has been appointed, the creditors present, by the majority of their votes, without having regard to the amount of their claims, shall select a committee of three persons from amongst the known creditors or their representatives, who shall control the administration of the trustee, and who in cases of importance shall be called upon to take part in the decisions concerning the affairs of the bankruptcy.

In the case mentioned in the last paragraph but one of § 66, the Bankruptcy Court chooses the members of the committee of creditors as well as a trustee. The same rule applies if those who have been chosen refuse to do the work apportioned to them, and another election, held in the same or a subsequent meeting of creditors convened as soon as possible, leads to no positive result.

The persons chosen receive no remuneration, but only reimbursement of travelling expenses and costs incurred, and any of them, in a meeting of creditors specially convened for this purpose, may be discharged by the majority of the creditors present, whereupon a fresh election takes place.

When it is found subsequently that a creditor who is a member of the committee in reality has no claim on the estate, the Bankruptcy Court shall discharge him, and a fresh election shall take place in the manner above mentioned.

When several trustees have been appointed according to § 67, the creditors, by the majority of votes indicated in that Article, may decide that no committee of creditors shall be selected. Those functions which, according to this Act, are to be attributed to the committee of creditors, then devolve on the Bankruptcy Court.

**69.** Saavel den midlertidige Bestyrer som Kurator har Krav paa et passende Honorar for deres Arbejde saavel som paa Godtgjorelse af havte Udlæg i Anledning af Boets Bestyrelse.

I Tilfælde af Uenighed tilkommer det Skifteretten at bestemme Honoraret og bedømme Udlægenes Nødvendighed og Størrelse m. m.

**70.** Samtidig med Kurators Valg bliver det tillige at bestemme, om han skal stille Sikkerhed, samt hvori denne skal bestaa.

Afgjørelsen heraf sker ved Afstemning, saaledes at, naar Flertallet af de afgivne Stemmer uden Hensyn til Fordringernes Størrelse lyder paa, at Sikkerhed skal stilles, afgjør Skifteretten, hvori Sikkerheden skal bestaa. Er det kun et Mindretal, der forlanger, at der skal stilles Sikkerhed, afgjør Skifteretten, om dette ikke desto mindre bør ske.

Selv om Kurator ikke fra Begyndelsen af har stillet Sikkerhed, kan Skifteretten, naar Kreditorudvalget fremsætter Begjæring derom, senere paalægge ham at stille en saadan.

Den stillede Sikkerhed bliver, forsaavidt den bestaar i Penge eller Pengeeffekter, at indsætte til Forvaring i en solid Sparekasse, Bank eller lignende Indretning paa Boets Regning.

**71.** Naar Skifteretten finder Grund hertil eller Kreditorudvalget forlanger det<sup>1)</sup>, afskediges Kurator, hvorefter nyt Valg foregaar paa den i § 66 bestemte Maade i en 8 Dage forud bekendtgjort Skiftesamling. Fordringshaverne kunne i denne vælge den afskedigede Kurator, om de hermed tro sig bedst tjente; dog kan Skifteretten negte sin Billigelse af Valget, medmindre Anmeldelsesfristen er udloben og en saadan Flerhed af Kreditorer, som § 64 ommelder, har gjenvalgt Kurator.

Den afskedigede Kurator er, dersom det forlanges, pligtig at fortsætte sine Forretninger, indtil en ny er valgt, til hvem han har at aflægge Regnskab og overlevere Boet.

**72.** Den Raadighed over Boet, som Skyldneren ved Konkursens Indtræden har tabt, udøves paa Fordringshavernes Vegne og i deres Interesse af Kurator med de Indskrænkninger og Bestemmelser, som i det Følgende angives. Han har at drage Omsorg for, at baade Aktiv- og Passivmassen rettelig udfindes, saavel som at Boets Midler sikkert og anvendes til, saavidt tilstrækker, at tilfredsstillende Fordringshaverne i den ved Lovgivningen bestemte Orden. Han har som en Følge heraf at sørge for Konkursmassens Bevarelse og den fornødne Realisation af Boets Eiendele, ligesom det ogsaa paahviler ham baade at indfordre Boets Tilgodehavende, i fornødent Fald ad Rettens Vei, og at undersøge samt, om nødvendigt, imødegaa Paastandene om Udlevering af Ting, der findes i Boet, saavel som iøvrigt at varetage Boets Tarv imod de enkelte Fordringshaveres og Andres særlige Paastande. Til Afbenyttelse under Udførelsen af de ham efter det Ovenanførte paahvilende Pligter blive Boets Papirer at overlevere Kurator imod Tilstaaelse i Skifteprotokollen.

Skyldneren er forpligtet til paa Kurators eller Skifterettens Begjæring at meddele alle de Oplysninger med Hensyn til Boets Tilstand og Forhold, som han er i Stand til at give.

**73.** Realisationen af Boets pantsatte Eiendele sker, forsaavidt ikke Andet gyldig vedtages, ved Tvangsauktion efter den gjældende Rets Regler<sup>2)</sup>. Kurator har at iværksætte de hertil sigtende Skridt med behørig Iagttagelse af Panthavernes Ret. Auktionskonditionerne forelægges i en Skiftesamling.

**74.** I vigtigere Tilfælde kan Kurator ikke tage Bestemmelse om Boets Behandling og Bestyrelse, udenat han har raadført sig med og erholdt Samtykke af

<sup>1)</sup> Derimod er der ingen Hjemmel for, at Skiftesamlingen kan beslutte Kurators Afskedigelse uden Skifterettens eller Kreditorudvalgets Villie, men Skiftesamlingen kan afskedige Kreditorudvalget (se § 68). — <sup>2)</sup> D. v. s. Lov Nr. 66 af 9 April 1891, hvis § 47 er ændret ved Lov Nr. 47 af 1 April 1905.



69. The provisional administrator, as well as the trustee, is entitled to a suitable fee for his services, and to indemnity against expenses incurred in respect of the administration of the estate.

In case of disagreement the Bankruptcy Court is authorised to decide as to the amounts of the fees, and makes an estimate as to the necessity and amount of the expenses etc., incurred.

70. Simultaneously with the appointment of the trustee, it is decided whether he is to give security, and if so, the nature of such security.

The decision on this point is arrived at by means of a vote, to the effect that when the majority of votes cast, without regard to the amount of the claims, is in favour of security being given, the Bankruptcy Court decides as to the nature of the security. If only a minority of the votes cast demands such security, the Court decides as to whether it ought not to be given in spite of the negative result of the voting.

Even when the trustee has not at first given security, the Bankruptcy Court, if the committee of creditors demands such a course, may require him to give security.

The security given, if it consists in money or negotiable securities, shall be deposited for the account of the estate in a trustworthy savings bank, bank or other similar institution.

71. When the Bankruptcy Court finds that there is sufficient reason for such a course, or the committee of creditors requests it<sup>1</sup>), the trustee may be removed, whereupon another election shall take place in the manner indicated in § 66 at a meeting of the creditors published eight days beforehand. The creditors at this meeting may re-elect the dismissed trustee if they are of opinion that such choice serves their interests best; the Bankruptcy Court, however, may refuse its approval of the election, unless the period stipulated for the presentation of claims has expired, and such a majority of creditors as is mentioned in § 64 has re-elected the trustee.

The dismissed trustee, if requested to do so, is obliged to remain in his functions until a new trustee has been appointed, to whom he has to give an account of his administration and to hand over the assets of the estate.

72. The right to dispose of his property which the debtor has lost at the commencement of the bankruptcy, is exercised by the trustee, for the account and in the interest of the creditors, subject to the limitations and in pursuance of the provisions which are given below. He has to see that both assets and debts are correctly estimated, and that the assets of the estate are secured and employed, as far as possible, in payment of the creditors in the order fixed by the law. Consequently, he has to see that the assets of the estate are preserved, and that the property of the estate, if necessary, is realised; it is also incumbent on him, on the one hand, to obtain payment of the claims of the estate, if necessary by means of an action, and on the other hand to examine and, if it is necessary, to contest the claims regarding the surrender of objects which the estate has in its possession, and furthermore to take care of the interests of the estate as against the individual creditors and the special claims of other persons. For his use during the performance of the duties incumbent on him according to what has been stated above, the documents of the estate are handed over to the trustee on his receipt being given in the record of the Bankruptcy Court.

At the request of the trustee or the Bankruptcy Court, the debtor must give all the information with regard to the estate and the legal position of the assets which he is in a position to give.

73. The realisation of the pledged objects of the estate takes place, in default of any other valid decision, by means of a compulsory auction according to the provisions of the law which is now in force<sup>2</sup>). The trustee must make the necessary arrangements in this regard, at the same time duly safeguarding the rights of the pledge-holders. The conditions of the auction are submitted to a meeting of creditors.

74. The trustee cannot decide as to the treatment and administration of the estate in regard to very important points, without having consulted and obtained

<sup>1</sup>) On the other hand, the meeting of creditors is not authorised to decide that the trustee shall be removed without the approval of the Bankruptcy Court or the committee of creditors, but the meeting of creditors may dismiss the committee of creditors (see § 68). — <sup>2</sup>) I.e. Act No. 66 of 9 April 1891, § 47 of which has been modified by Act No. 47 of 1 April 1905.

Kreditorudvalget eller i fornødent Fald af Skiftesamlingen. Han holder Moder med Kreditorudvalget, saa ofte Grund dertil findes. Over Forhandlingerne i disse fores en af Skifteretten bekræftet Bog, som ved hvert Mode underskrives af Kurator saavel som af Medlemmerne af Kreditorudvalget. Er der Meningsforskjel imellem disse sidste, gjælder det, som de fleste Stemmer vedtage, for Kreditorudvalgets Beslutning.

Dersom Kurator og Kreditorudvalget ei kunne blive enige, bliver Skifterettens Bestemmelse at indhente eller, naar denne finder Anledning dertil eller Kurator eller Kreditorudvalget forlanger det, en Skiftesamling at indkalde.

**75.** Uden Kreditorudvalgets Samtykke eller, hvis dette negtes, Skifterettens Billigelse kan Kurator navnlig ikke 1. erkjende som Trediemand tilhørende nogen i Boets Besiddelse værende Gjenstand eller Samling af Gjenstande af hoiere Værdi end 100 Rd.<sup>1)</sup>; — 2. indgaa Forlig, hvorved der frafaldes muligt Krav af mere end 100 Rd.<sup>1)</sup>; — 3. sælge Boets udestaaende Fordringer ved offentlig Auktion; — 4. sælge Boets andre Eiendele paa anden Maade end ved offentlig Auktion; — 5. bestemme Vilkaarene for Auktioner over faste Eiendomme eller Skibe; — 6. anlægge Retssager, hvis Gjenstand ikke er Indkrævelse af Boets ifølge dets Bøger og Papirer udestaaende Fordringer, derunder ogsaa Retssager, hvis Hensigt er at omstode Retshandeler, som ere indgaaede forend Konkursen; — 7. tage Bestemmelse om Paaanke af de i Boets Retstrætter afsagte Skiftekjendelser eller Domme.

Angaa de under Nr. 1 og 2 omhandlede Bestemmelser en Værdi af 1,000 Rd.<sup>2)</sup> eller derover, bør Sagen, selv om Kurator og Kreditorudvalget ere enige, dog forelægges Skifteretten til Billigelse eller eventuelt en Skiftesamling til Afgjorelse i Overensstemmelse med § 65, og det Samme gjælder, hvor der er Spørgsmaal om at overlade Boets Eiendele til Fallenten eller Andre paa hans Vegne for Vurderingssummen, med eller uden Tillæg af visse Procent.

**76.** I Udførelsen af sine Forretninger har Kurator at udvise almindelig Agtpaa-givenhed, ligesom han skal aflægge noiagtigt Regnskab for sin Forvaltning, i hvilket sidste Oiemed han skal fore en af Skifteretten autoriseret Kassebog, hvori samtlige Boets Indtægter og Udgifter strax indfores.

Kurator har at drage Omsorg for, at Boets Retstrætter udføres paa behørig Maade, i fornødent Fald ved en af ham antagen Sagfører. Ogsaa i andre Henseender kan Kurator antage den fornødne Medhjælp til Boets Bestyrelse saavel som til Inkassationen, dersom han ikke selv kan bestride det Hele.

**77.** Mindst een Gang hver Maaned, men iøvrigt saa ofte Kreditorudvalget maatte forlange det, har Kurator at forelægge sin Kassebog for Kreditorudvalget, som gjennemgaar de enkelte Poster i den og har at paase, at de Beløb, som ikke udkræves for at dække løbende Udgifter, indsættes til Forvaring og Frugtbar-gjorelse i en solid Sparekasse, Bank eller lignende Indretning, saavel som at Aktiverne, om det agtes fornødent, forsynes med Udvalgets Prohibitivpaategning. Forsaavidt der ved Gjennemsynet er fundet Noget at bemærke, skal Kreditorudvalget antegne Saadant i Kassebogen. Een Gang hver Maaned eller oftere, om det forlanges, har Kurator at forevise Kassebogen for Skifteretten, hvem det paaligger at have Tilsyn med, at Kreditorudvalgets Paalæg med Hensyn til Kassebeholdningens Anbringelse m. V. efterkommes, ligesom ogsaa, naar den selv finder Noget at erindre med Hensyn til Anbringelsen af denne Beholdning, at forhandle det derom Fornødne med Kreditorudvalget og efter Omstændighederne forelægge Sagen i en Skiftesamling.

Saavel i Henseende til ovennævnte Pligters Opfyldelse som iøvrigt er Kreditorudvalget befoiet til at undersøge Kurators Administration og afkræve ham Op-lysninger.

**78.** Inden 4 Uger efter den i § 52 Litra b omhandlede Skiftesamling har Kurator, medmindre Skifteretten undtagelsesvis dertil maatte indromme en længere Frist, at udarbejde en, saavidt muligt, fuldstændig og noiagtig Oversigt over Boets Status

<sup>1)</sup> = 200 Kroner.    <sup>2)</sup> = 2000 Kroner.

the consent of the committee of creditors or, if necessary, of a meeting of creditors. He meets the committee of creditors as often as there is occasion to do so. These meetings are recorded in a book authorised by the Bankruptcy Court, which record at every meeting is signed by the trustee as well as by the members of the committee of creditors. If the latter disagree, that which the majority of them decides is considered as being the decision of the committee of creditors.

In the case of the trustee and the committee of creditors not being able to agree, the decision of the Bankruptcy Court is obtained, or, if the Court is of opinion that there is occasion to do so, or the trustee or committee of creditors requests it, a meeting of creditors is convened.

**75.** The trustee cannot, in particular, without the consent of the committee of creditors, or, if such consent is not given, the approbation of the bankruptcy Court: 1. recognise as belonging to a third person any object or collection of objects in the possession of the estate, of a value exceeding 100 Rd<sup>1</sup>); — 2. make agreements by which eventual claims exceeding 100 Rd<sup>1</sup>) are renounced; — 3. sell the outstanding claims of the estate by public auction; — 4. sell any other objects of the estate in any other manner than by public auction; — 5. make stipulations as to the sale of immovables and ships by auction; — 6. bring actions the object of which is not to recover the claims outstanding according to the books and documents of the estate, including actions the object of which is to rescind legal transactions concluded before the commencement of the bankruptcy; — 7. appeal against the findings of the Bankruptcy Court or judgments given in lawsuits concerning the estate.

If the decisions mentioned under Nos. 1 and 2 concern a value of 1000 Rd<sup>2</sup>) or more, the matter, even when the trustee and the committee of creditors agree, shall be referred to the Bankruptcy Court for approbation, or eventually to a meeting of creditors for decision according to § 65, and the same rule applies where there is a question of handing over the assets of the estate to the bankrupt or other persons on his behalf for their estimated value, with or without the addition of a certain amount per cent.

**76.** In the exercise of his functions the trustee must show ordinary care, and he must give an exact account of his management; with this latter object in view he must keep a cash-book authorised by the Bankruptcy Court, in which he must enter forthwith all the receipts and disbursements of the estate.

The trustee must see that the lawsuits concerning the estate are conducted in a proper manner, if necessary by the aid of a solicitor selected by himself. Also in other respects the trustee is authorised to engage the necessary assistance for the management of the estate, as well as for the purpose of collecting money, if he is unable to attend to it all in person.

**77.** At least once every month, but in general as often as the committee of creditors requires it, the trustee shall submit his cash-book to the committee of creditors, which shall examine the various entries in it and shall see that the amounts not required for payment of current expenses are deposited with a view to being guarded and obtaining interest in a solvent savings bank, bank or other similar institution, and that the assets, if it is considered necessary, are provided with a prohibitive note, signed by the members of the committee. If at the examination the committee has found anything to remark, such observation shall be recorded in the cash-book. Once every month, or more frequently if required, the trustee shall submit the cash-book to the Bankruptcy Court, on which it is incumbent to see that the instructions of the committee of creditors with regard to where the amount in cash etc. shall be deposited, are carried out, and also, when the Court itself has any observation to make as to where such amount is deposited, to discuss this point sufficiently with the committee of creditors, and according to circumstances to submit the matter to a meeting of creditors.

As well with regard to the performance of the duties above mentioned as with regard to other matters, the committee of creditors is authorised to look into the management of the trustee and to demand his explanations.

**78.** Within four weeks after the meeting of creditors mentioned in § 52 letter b, unless the Bankruptcy Court exceptionally grants him a longer period for this purpose, the trustee must make out, as far as possible, a complete and exact statement

1) 200 Kroner. — 2) 2000 Kroner.

ifølge dets Bøger og Regnskaber samt de afholdte Registrerings- og Vurderingsforretninger. Skyldneren er derhos forpligtet til i dette Øiemed at meddele Kurator alle fornødne Oplysninger.

Den udarbejdede Statusoversigt forsynes med Paategning baade af Kurator og af Skyldneren, Enhver for sit Vedkommende, om at være saa fuldstændig og udtømmende, som det har været muligt at skaffe den, og at med deres Vidende intet Urigtigt deri findes. Derefter henlægges den heromhandlede Statusoversigt, efter forudgaaende offentlig Bekjendtgjørelse derom i de i § 52 omhandlede offentlige Blade, paa Skifterettens Kontor til Eftersyn for Boets Vedkommende.

79. Inden 14 Dage, efterat den i den foregaaende Paragraf omhandlede Statusoversigt er afgiven, har Kurator i Forbindelse med Kreditorudvalget eller efter dettes Begjæring dertil særlig af Skifteretten beskikkede handelskyndige Revisorer at afgive en Indberetning til Skifteretten om de vigtigste Aarsager til Falliten, om dennes Beskaffenhed, om Forretningens Gang i de sidste Aar for Falliten og om de Kjendsgjæringer, som iøvrigt komme i Betragtning ved Bedømmelsen af, om der er Grund til at foranledige kriminel Undersøgelse imod Skyldneren, og om den ved § 46 paalagte Forpligtelse er tilsidesat. Finder Skifteretten Grund til at foranledige kriminel Undersøgelse, har den at iagttage det i saa Henseende Fornødne. Indberetningen eller en Gjenpart af den skal forblive til Eftersyn for Boets Vedkommende paa Skifterettens Kontor.

80. Alt, hvad der i nærværende Lov er fastsat at skulle paahvile Kurator, skal i Boer, i hvilke det besluttet ikke at beskikke Kurator, paahvile Skifteretten, dog at denne er berettiget til at antage en Inkassator. I de Tilfælde, hvori Kurator skal tilkalde Kreditorudvalget, skal Skifteretten, naar ingen Kurator er beskikket, æske Fordringshavernes Mening i en Skiftesamling, dersom disse ikke paa samme Maade, som i § 68 er foreskrevet om det der omhandlede Valg, have udvalgt nogle Kreditorer eller Befuldmægtigede for Kreditorer til at træde istedetfor Skiftesamlingen.

## Kapitel X. Foranstaltninger med Hensyn til Skyldnerens Person.

81. Skifteretten kan bestemme, at Skyldneren skal anholdes, naar det maa antages, at han er i Begreb med at fravende Boet nogen af dets Eiendele eller Rettigheder, saavelsoom naar i Henhold til § 79 kriminel Undersøgelse mod Skyldneren formenes at burde finde Sted.

Naar Anholdelse er iværksat, har Skifteretten uden Ophold derom at meddele vedkommende kriminelle Ret Underretning og at foranledige den kriminelle Undersøgelses videre Fremme. Skifteretten har at bistaa Undersøgelssdommeren ved at delagtiggjøre ham i alle de Oplysninger med Hensyn til Fallentens Forhold, som ere fremkomne under Boets Behandling.

82. Skifteretten kan bestemme, at Skyldneren skal hensættes i simpelt Fængsel, naar han uden derfor at angive fyldestgørende Grunde undlader at fremkomme med den i § 47 paabudne Fortegnelse, behørig affattet, eller han modvilligen negter at gaa tilhaande med Oplysninger ifølge §§ 54, 72 og 78 eller han uden Skifterettens Tilladelse forlader eller forsøger paa at forlade Retskredsen eller han i andre Maader modvilligen undlader at efterkomme, hvad denne Lov paalægger ham.

Fængslingen vedvarer, saalænge Skifteretten finder det nødvendigt til at fremme dens Hensigt, dog ingensinde længere end 6 Maaneder.

Omkostningerne ved Fængslingen afholdes paa samme Maade som Delinkventomkostninger.

83. Understøttelser af Boet, saasom ved Overdragelse af Husgeraad, Overladelse af Beboelsesleilighed, Underholdningsbidrag i Penge osv., kan tilstaaes Skyldneren, efterat Kreditorerne i den i § 52 Litra b omhandlede eller i en senere Skiftesamling have havt Leilighed til at erklære sig derover og enten ingen Indsigelse sker derimod eller Flertallet af de Mødende samtykker deri og Skifteretten ikke finder Grund til at negte sin Billigelse deraf, hvorved det navnlig bør have for Øie, at ikke Understøttelsens Tilstaaelse bliver til særlig Skade for nogen Pant-haver eller privilegeret Kreditor, som ikke har samtykket i den. Ei heller bør nogen

of the assets and debts of the estate according to the books and accounts, and the acts of registration and valuation which have taken place. The debtor is obliged to give the trustee all necessary information with this object in view.

The statement made out is signed both by the trustee and the debtor, each of them on his own behalf, to the effect that the statement is as complete and exhaustive as it has been possible to make it, and that to their knowledge there is nothing incorrect in it. Thereupon the statement in question, after having been published in the public newspapers mentioned in § 52, is displayed at the office of the Bankruptcy Court to be viewed by any person interested in the affairs of the estate.

79. Within a fortnight of the handing in of the statement mentioned in the preceding Article, the trustee, in conjunction with the committee of creditors or, at the request of such committee, with auditors who are experts in matters of commerce, and who have been specially nominated for this purpose by the Bankruptcy Court, must make a report to the Bankruptcy Court, stating the most important causes of the bankruptcy, its nature, the course of the business during the last year before the bankruptcy, and the facts which in general have to be considered when the question is examined as to whether there is sufficient reason to submit the debtor to a criminal trial, and whether the obligation imposed according to § 46 has been neglected. If the Bankruptcy Court is of opinion that there is ground for submitting him to such a trial, the Court shall do what is necessary in regard to this point. The report, or a copy of it, shall remain at the office of the Bankruptcy Court for examination by those who are interested in the estate.

80. All that which according to the present Act is incumbent on the trustee, in estates in which it is decided not to appoint a trustee, is incumbent on the Bankruptcy Court, which, however, is authorised to employ a collector. In those cases in which the trustee has to convene the committee of creditors, the Bankruptcy Court, when no trustee has been appointed, shall take the opinion of the creditors at a meeting, if the latter, in the same manner as is prescribed in § 68 with regard to the appointment there dealt with, have not selected a committee of creditors or representatives of creditors to act on behalf of the meeting of creditors.

## Chapter X. Measures in regard to the debtor personally.

81. The Bankruptcy Court may decide that the debtor shall be arrested when there is ground for supposing that he intends to withhold some of the objects or rights belonging to his estate, and also when, according to § 79, it is considered justifiable to submit the debtor to a criminal trial.

When the arrest has been effected, the Bankruptcy Court shall without delay inform the competent Criminal Court of the occurrence, and see that the criminal trial is proceeded with. The Bankruptcy Court shall assist the examining magistrate by giving him all the information with regard to the conduct of the bankrupt which has transpired during the bankruptcy proceedings.

82. The Bankruptcy Court is authorised to decide that the debtor shall be subjected to simple imprisonment when, without giving satisfactory reasons for such omission, he omits to produce the statement duly drawn up as prescribed in § 47, or when he deliberately refuses to give the information indicated in §§ 54, 72 and 78, or when, without obtaining the permission of the Bankruptcy Court to do so, he leaves or attempts to leave his jurisdiction, or otherwise deliberately omits to comply with the provisions of this Act.

The imprisonment shall continue as long as the Bankruptcy Court considers it necessary for the furtherance of its aim, never, however, for longer than six months.

The expenses of the imprisonment shall be defrayed in the same manner as the expenses for ordinary criminals.

83. Assistance rendered by the estate, as, for example, by way of permitting the use of furniture or apartments, or of allowance for board, etc., may be granted to the debtor when the creditors at the meeting mentioned in § 52 letter b, or at a subsequent meeting, have had the opportunity of discussing the point, and either have had no objection to make, or the majority of creditors present have given their consent, and the Bankruptcy Court is of opinion that there is no reason to refuse its approval, in which connection, in particular, there shall be taken into consideration whether the granting of the assistance will be seriously detrimental to any pledge-

vedvarende Understøttelse tilstaaes for længere Tid end 1 Aar eller ud over Boets Slutning, medmindre samtlige Kreditorers Samtykke dertil tilveiebringes. Forelobig Benyttelse af registrerede Effekter udover det, som ifølge § 160, jfr. § 1, ei kan inddrages under Konkursen, saavel som af Beboelsesleilighed kan af Skifteretten overlades Skyldneren med Familie, indtil Kreditorerne paa den i det Foregaaende bestemte Maade have havt Leilighed til at erklære sig.

## Kapitel XI. Om Fordringshavernes Indkaldelse og Fordringernes Prøvelse.

84. Enten i Forbindelse med Bekjendtgjørelsen om Boets Overtagelse (§ 52) eller ved en efter samme Regler senest inden 3 Uger derefter iværksat særlig Bekjendtgjørelse, som i nogenlunde betydelige Boer bør gjentages nogle Gange, skal Skifteretten opfordre Alle og Enhver, der have Fordringer at gjøre gjældende mod Boet, til inden en vis i Bekjendtgjørelsen bestemt Tid skriftlig at anmelde deres Fordringer og til derhos at fremsende de Dokumenter i Original eller Afskrift, hvortil Fordringerne støtte sig, saavel som til paa en anden bestemt Tid at møde for Skifteretten for at overvære og deltage i de anmeldte Fordrings Prøvelse og, dersom Skyldneren er Handlende, Fabrikant eller Skibsrheder, da tillige i Behandlingen af Forslag til Akkord, om saadant skulde blive fremsat. Derhos har Kurator uden Ophold efter Afholdelsen af den i § 52 Litra b omhandlede Skiftesamling ved anbefalet Brev at tilstille de da bekjendte Fordringshavere Gjenpart af Bekjendtgjørelsen efter Reglerne i § 55, forsaavidt de ikke allerede i Medfør af denne Paragraf have faaet Meddelelse om Falliten.

85. Fristen, inden hvilken Fordringshaverne opfordres til at melde sig, bor i Almindelighed bestemmes til 6 Uger fra den sidste offentlige Bekjendtgjørelse at regne, men, hvor Omstændighederne tale derfor, kan den ansættes til en længere Tid indtil 4 Maaneder, hvilken sidste Termin altid skal vælges, hvor Skyldneren maa antages at have staaet i oversøiske Forbindelser. Tiden til Fordringernes Prøvelse for Skifteretten maa ikke sættes fjernere end til 6 Uger efter Anmeldelsesfristens Udløb.

86. Skifteretten fører Protokol over de i Boet anmeldte Fordringer. De indløbne Anmeldelser saavel som den over dem forte Protokol ligge paa Skifterettens Kontor til Eftersyn saavel for Kurator som for Fordringshaverne og Skyldneren.

87. I Mellemtiden imellem Anmeldelsesfristens Udløb og den til Fordringernes Prøvelse bestemte Skiftesamling har Kurator at forfatte en Oversigt over samtlige inden Fristen anmeldte Fordringer saavel som over Pantefordringerne, der paahvile Boets Eiendele. Tillige angives i denne Oversigt, hvilken Fortrinsret der efter Kurators Skjøn tilkommer den paagjældende Fordring. Oversigten, til hvilken Kurator, forsaavidt dertil er Anledning, har at knytte Bemærkninger angaaende Fordringernes Rigtighed og Fortrinsret samt angaaende de Afkræftelser, som Boet skjønnes at have Grund til at søge iværksatte, skal være saa betimelig færdig, at den, bilagt med de indløbne Anmeldelser og øvrige i Oversigten paaberaabte, i Boet værende Dokumenter, kan henligge til Eftersyn for Boets Vedkommende paa Skifterettens Kontor 3 Uger forend den til Fordringernes Prøvelse bestemte Samling.

88. I den til Fordringernes Prøvelse berammede Skiftesamling skal Kurator saavel som Skyldneren være tilstede. Skifteretten gennemgaar samtlige Anmeldelser, der ere indkomne inden den fastsatte Anmeldelsesfrists Udløb, med Fordringshaverne og Skyldneren. Kurator skal ved enhver Fordring erklære, om han paa

ad § 88. Det er udeblevne Kreditorers egen Sag at skaffe sig Underretning om det paa Mødet passerende. En Højesterets Dom af 15 Februar 1904 har udtalt, at der mangler Hjemmel til at paalægge Skifteretten, naar den har iagttaget de i Konkurslovens 11te Kapitel foreskrevne Regler for Kreditorernes Indkaldelse og Fordringernes Prøvelse, at foretage yderligere Skridt for at underrette Kreditorerne om det ved Fordringernes Prøvelse forefaldne.

holder or privileged creditor who has not given his consent. It is not permissible that continual assistance should be given for a longer period than one year, or after the winding-up of the bankruptcy, unless the consent of all the creditors is given to this effect. The Bankruptcy Court is authorised to grant to the debtor and his family the temporary use of registered objects beyond what according to § 160, (see § 1) cannot be included in the assets of the estate, as well as of apartments, until the creditors, in the manner above indicated, have had the opportunity of giving their opinion in the matter.

## Chapter XI. Convening the creditors and verification of claims.

84. Either in connection with the publication concerning the commencement of the bankruptcy proceedings (§ 52), or by means of a special publication made according to the same rules at the latest within three weeks of the commencement, a publication which in the case of important estates ought to be repeated several times, the Bankruptcy Court shall summon all persons who have any claims against the estate, within a certain period which is fixed in the publication, to give notice of their claims in writing, and furthermore to send in the documents, either the originals or copies thereof, on which their claims are based, and also, within another definite period, to meet at the Bankruptcy Court in order to be present at and take part in the verification of the presented claims, and, if the debtor is a trader, manufacturer or shipowner, at the same time to take part in the deliberations concerning the scheme of a composition in the case of such a scheme having been suggested. Further, the trustee, after the meeting of creditors which is mentioned in § 52 letter b has taken place, must without delay, by means of registered letters, send the creditors then known a copy of the publication according to the rules of § 55, provided they have not already been informed of the commencement of the bankruptcy according to that Article.

85. The period within which the creditors are called upon to give notice of their claims is as a rule fixed at six weeks, to be reckoned from the date of the last publication, but where circumstances are in favour of it, this period may be extended up to four months, which last period shall always be chosen when the debtor is supposed to have had overseas connections. The date for the verification of the claims at the Bankruptcy Court must not be fixed later than six weeks from the expiration of the period chosen for giving notice of the claims.

86. The Bankruptcy Court keeps a record of the claims of which notice has been given. Such claims, as well as the record kept of them, remain at the office of the Bankruptcy Court, where they may be inspected by the trustee, the creditors and the debtor.

87. In the interval between the expiration of the period fixed for the notification of claims and the meeting of creditors fixed for the verification of the claims, the trustee must draw up a statement of all the claims notified during the period fixed, and also of the mortgages and pledges which may be at the charge of the assets of the estate. In this statement shall also be indicated what right of preference, according to the estimate of the trustee, is due to the claim in question. The statement, as to which the trustee, if opportunity occurs, shall make his remarks concerning the correctness and preference rights of the claims, and also with regard to claims for annulment which the bankruptcy estate is considered as having good reason to pursue, shall be drawn up so early that, together with the notifications of claims and other documents of the estate referred to in the statement, it may be at the disposal of all persons interested in the estate at the office of the Bankruptcy Court three weeks before the meeting fixed for the verification of the claims.

88. At the meeting of creditors convened for the verification of claims, the trustee as well as the debtor shall be present. The Bankruptcy Court examines all the notifications which have arrived during the period fixed for such notifications, together with the creditors and the debtor. On the examination of each claim the

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*To § 88.* Creditors not present have themselves to see that they are informed of what has happened at the meeting. A judgment rendered by the Supreme Court on 15 February 1904 decides that there is no provision in the law to the effect that the Bankruptcy Court, after having observed the rules prescribed in the eleventh Chapter of the Bankruptcy Act with regard to convening the creditors and the verification of the claims, shall do anything further in order to inform the creditors as to what has happened in connection with the verification of the claims.

Boets Vegne har eller ikke har nogen Indvending at gjøre mod den eller den for samme forlangte Fortrinsret, hvorhos tillige saavel Skyldneren som Fordringshaverne opfordres til at erklære sig over Fordringen og den samme paa Oversigten givne Fortrinsret. Forsaavidt nogen Fordring modsiges eller den samme givne Fortrinsret bestrides, skal Skifteretten mægle Forlig imellem de Paagjældende.

Tillige tages, forsaavidt Saadant ikke alt er sket, Bestemmelse, om Retshandler, der ere indgaaede før Konkursen, skulle angribes i Henhold til Reglerne i §§ 20—30.

89. Fremsetter hverken Kurator eller Skyldneren eller nogen tilstedeværende Fordringshaver i den i § 88 omhandlede Skiftesamling nogen Indsigelse imod en Fordring eller den samme paa Oversigten givne Fortrinsret, er Fordringen og dens Plads i Konkursordenen anerkjendt og kan ikke mere bestrides under Konkursbehandlingen. Statens og Kommunernes Fortrinsret for udestaaende Skatter og Afgifter er ikke betinget af, at det Offentliges Tarv er blevet varetaget i Overensstemmelse med nærværende Paragraf.

90. Enhver Fordringshaver, hvis Fordring er anerkjendt af Boet, kan, mod at indlevere en Gjenpart, forlange det originale Dokument, hvorpaa Fordringen stottes, tilbageleveret med Skifterettens Paategning om, at og for hvilket Beløb den er anerkjendt i Boet.

91. Fordringer, der indkomme, efterat Anmeldelsesfristen maatte være udløben, skulle dog ikke være udelukkede fra at komme i Betragtning ved Udlodningerne i Boet, forudsat at de indkomme, forend det er optaget til Slutning.

92. Anmeldes en Fordring, efterat den bestemte Anmeldelsesfrist er udløben, bliver den ikke at behandle ved den berammede Skiftesamling, men den bliver, forsaavidt den ifølge den foregaaende Paragraf kan tages i Betragtning, at prøve i en senere Skiftesamling, hvortil samtlige Fordringshavere, der have meldt sig, indkaldes.

Den Fordringshaver, som først har anmeldt sin Fordring efter Udløbet af den bestemte Anmeldelsesfrist, har at godtgjøre Boet alle Omkostninger, hvormed dens Prøvelse i en egen Skiftesamling maatte være forbunden.

93. Naar nogen anmeldt Fordring modsiges, bliver det ved Skifterettens Kjendelse i Overensstemmelse med de gjældende processuelle Regler at afgjøre, om og for hvilket Beløb Fordringen skal komme Boet til Udgift. Paa samme Maade afgjøres Tvistigheder om Fortrinsret og alle andre Tvistigheder om, hvorledes Boet skal udloddes. Kurator har selv eller ved Sagfører i slige Tilfælde at varetage Boets Tarv.

94. De afsagte Kjendelser kunne ikke, medmindre de paagjældende Parter frafalde Paaanke eller vedkommende Kjendelse ifølge sin Gjenstand er upaaankelig, lægges til Grund for Boets videre Behandling, forend Paaankefristen er udløben, udenat Paaanke er iværksat.

Skulde Kjendelsen blive forandret eller annulleret ifølge en senere iværksat Paaanke, tages behørigt Hensyn hertil ved Boets videre Behandling og i fornødent Fald ved Omgjørelse af det Foretagne, hvis Skiftet ikke endnu er sluttet, men efter den Tid maa enhver Forandring søges iværksat ved Paaanke af Udlodningen.

Lignende Regler gjælde om de i Anledning af Paaanken afsagte Overretsdomme.

95. Ville een eller flere Fordringshavere paaanke en i en Tvist, hvori de ikke ere Boets Modparter, afsagt Skifteretskjendelse eller Dom, ved hvilken Boet vil lade det bero, da have de dertil Adgang, forsaavidt der ikke mellem Boet og Vedkommende er sluttet Overenskomst om Tvistens Gjenstand og Sagens Paaanke ikke udsætter Boet for Tab af Rettigheder, som ved Kjendelsen eller Dommen

*ad § 94.* Kendelser under Konkursbehandlingen kunne med visse Begrænsninger (jvf. nærmere Kap. 15), naar de ere afsagte af en Skifteret udenfor København, indankes for vedkommende Overret, og derfra eventuelt til Højesteret (i enkelte Tilfælde dog direkte til Højesteret, jvf. § 140), men, naar de ere afsagte af Landsøver samt Hof- og Stadsrettens Skiftekommission eller af Sø og Handelsrettens Skifteretsafdeling, til Højesteret.



trustee, on behalf of the estate, shall declare whether or not he has any objection to make against the claim or the right of preference demanded for the same in the statement above mentioned, and further, both the debtor and the creditors shall be asked to give their opinion in regard to the claim and the right of preference demanded for it in the said statement. In the case of any claim being contested, or the right of preference being contested, the Bankruptcy Court shall try to bring about a compromise between the interested parties.

At the same time, if this has not already been done, it shall be decided whether legal transactions concluded before the commencement of the bankruptcy shall be attacked in conformity with the rules of §§ 20—30.

89. If at the meeting of creditors dealt with in § 88, neither the trustee nor the debtor has any objection to make with regard to a claim or the right of preference referred to in the statement of claims, the claim, and its number in the series of claims notified to the estate, is considered as being recognised, and can no more be contested in the course of the bankruptcy proceedings. The right of preference of the State and the municipalities in regard to outstanding taxes and rates is not subordinated to the condition that the public interest has been safeguarded in accordance with the present Article.

90. Every creditor whose claim has been recognised by the estate, may, upon handing in a copy, demand that the original document on which the claim is based shall be restored to him with a note of the Bankruptcy Court stating that, and for what amount, the claim has been recognised by the bankruptcy estate.

91. Claims arriving after the expiration of the period fixed for notification are, however, not excluded from being considered when the distribution of dividends takes place, provided that they arrive before the bankruptcy is closed.

92. If a claim is notified after the expiration of the period fixed for the notification of claims, such claim shall not be dealt with at the convened meeting of creditors, but, in so far as, according to the preceding Article, it may be considered, it will be examined at a later meeting, to which all the creditors who have given notice of their claims shall be convened.

A creditor who has not given notice of his claim until after the expiration of the period fixed for notification, must indemnify the estate against all the expenses connected with the verification of the claim at a special meeting of creditors.

93. If any notified claim is contested, it shall be decided by the Bankruptcy Court, in conformity with the rules of procedure in force, whether and for what amount the claim shall be at the charge of the assets. In the same way are settled disputes regarding rights of preference, and all other disputes connected with the distribution of the assets. In such cases the trustee himself, or a solicitor on his behalf, has to take care of the interests of the estate.

94. The decisions rendered cannot, except where the interested parties renounce the appeal or the decision in question, owing to its nature, cannot be appealed against, serve as the basis of further proceedings in the bankruptcy until the period for an appeal has expired without any appeal having been made.

If the decision rendered is modified or annulled on an appeal made subsequently, due notice is taken of the modification or annulment in the further proceedings relating to the estate, and, in case of necessity, when what has been already done has to be modified, if the bankruptcy is not yet closed, but after that time any modification must be effected by way of an appeal against the distribution of the assets.

Similar rules apply with regard to judgments of the Appeal Courts rendered on an appeal.

95. If one or more creditors desire to appeal against a decision given by the Bankruptcy Court or against a judgment given in a dispute in which they are not adverse parties as against the assets, while the estate rests satisfied with such decision or judgment, they are permitted to do so, provided no agreement between the estate and the interested person has been arrived at in regard to the object of the dispute,

*To § 94.* Decisions rendered during bankruptcy proceedings (see further particulars in Chapter 15), when rendered by a Bankruptcy Court outside Copenhagen, can with certain limitations, be appealed against before the competent Appeal Court, and thence eventually before the Supreme Court (in certain cases, however, the appeal lies to the Supreme Court direct; see § 140); but, when they have been rendered by the Distribution Committee of the Superior Country and Court and Town Tribunal and the Distribution Court of the Maritime and Commercial Tribunal, before the Supreme Court.

maatte være det tilkjendte. De Paagjældende ere pligtige at lade Ankestævningen forkynde for Boets Kurator.

96. Fordringshavere, som ved Paaanke i Henhold til den foregaaende Paragraf have forøget Boets Masse, ere berettigede til at forlange de herpaa anvendte Bekostninger erstattede af Boet, forsaavidt de ikke overstige den Forøgelse, som Boet derved vinder. Er Boet sluttet, naar den endelige Dom falder, tilfalder det ved Paaanken Vundne den eller dem, som have iværksat den, indtil deres Bekostninger paa den ere dækkede; med Overskudet forholdes der efter § 134.

### III. Om de Maader, hvorpaa Konkursbehandlingen endes.

#### Kapitel XII. Almindelige Bestemmelser.

97. Viser det sig i Konkursbehandlings Lob, at Boet ikke er tilstrækkeligt til at dække Omkostningerne ved Behandlingen, sluttet denne strax, og de paaløbne Omkostninger, som ikke af Boet kunne dækkes, tilsvares af den, der har forlangt Konkursbehandlingen. Dog kan den Kreditor, som har begjært Konkursbehandlingen, naar han har Tvivl i saa Henseende, befrie sig fra yderligere Forpligtelser ved til Skifteprotokollen at erklære, at han anser Boet for utilstrækkeligt til at afholde de med Behandlingens Fortsættelse forbundne Omkostninger og derfor ikke vil bære disse, og, dersom da ikke i en i dette Oiemed indkaldt Skiftesamling andre Kreditorer erklære at ville paatage sig at tilsvare de med Behandlingens Fortsættelse forbundne Udgifter, kan han fordr Skiftebehandlingen sluttet strax.

98. Efterat den i § 85 omhandlede Anmeldelsesfrist er udloben, kan Skyldneren paa ethvert Trin af den senere Behandling faae Boet overgivet til fri Raadighed, naar han for Skifteretten fremlægger skriftligt Samtykke fra samtlige Fordringshavere, som have meldt sig. Lige med Samtykke fra en Fordringshavers Side staaar Bevis for, at han har faaet fuld Betaling for den af ham anmeldte Fordring.

99. Iøvrigt endes Konkursbehandlingen enten ved en af Skifteretten stadfæstet Akkord eller ogsaa ved de af Skifteretten foretagne Udlodninger.

#### Kapitel XIII. Om Akkord.

100. Dersom Skyldneren er Handlende, Fabrikant eller Skibsrheder, kan han forlange, at en Forhandling om Akkord skal indledes i Overensstemmelse med nedenanførte Regler.

101. Forhandling om Akkord i Henhold til § 100 kan dog ikke finde Sted: a) naar Skyldneren tilforn har været under Konkurs, medmindre han beviser at have betalt Fordringshaverne enten under Konkursen eller senere idetmindste 75 pCt. af deres Fordrings Beløb; — b) naar Skyldneren ikke forbliver tilstede under Boets Behandling, medmindre hans Bortreise sker med Skifterettens Tilladelse; — c) naar Skyldneren uden derfor at angive fyldestgørende Grund har undladt paa Skifterettens gjentagende Begjæring at fremkomme med den i § 47 paabudne Fortegnelse eller han modvilligen negter at gaa tilhaande med Oplysninger ifølge §§ 54, 72 og 78 eller han i andre Maader modvilligen undlader at efterkomme, hvad denne Lov paalægger ham; — d) naar Skyldneren er under Tiltale i Anledning af hans Forhold med Hensyn til Konkursen, saalænge han ikke ved endelig Dom er frifunden; — e) naar Skifteretten i Henhold til den ifølge § 79 stedfundne Undersøgelse finder, at Skyldnerens Forhold maa karakteriseres som letsindigt og uordentligt, selv om der ikke findes tilstrækkelig Anledning til at indlede kriminel Undersøgelse imod ham; — f) naar Skyldneren enten ikke har

*ad § 100.* Herved maa nu mærkes § 39 i Loven om Tvangsakkord udenfor Konkurs af 14 April 1905, hvor det hedder, at den i Konkurslovens Kapitel 13 aabnede Adgang for Handlende, Fabrikanter og Skibsrheder til under Konkurs at opnaa Akkord, skal — med Iagttagelse af de der foreskrevne Regler, forsaavidt disse ikke have særligt Hensyn til Skyldnerens Egenkab af Handlende, Fabrikant eller Skibsrheder — ogsaa staa aaben for andre end de nævnte Næringsdrivende.

and the appeal in the matter does not expose the estate to a loss of rights which by the decision or judgment have been adjudged to it. The interested persons shall give notice to the trustee of the estate of the summons of appeal.

96. Creditors who by way of an appeal in pursuance of the preceding Article have augmented the assets of the estate, are entitled to demand that the expenses incurred in relation to such augmentation shall be refunded by the estate, provided such expenses do not exceed the augmentation gained by the estate. If the estate is closed when the final judgment is rendered, the amount obtained by means of the appeal accrues to the person or persons who have maintained the appeal, until their expenses have been paid; the excess is dealt with according to § 134.

### III. The various ways in which bankruptcy proceedings terminate.

#### Chapter XII. General provisions.

97. If in course of the bankruptcy proceedings it appears that the assets of the estate are not sufficient to defray the expenses of the proceedings, the proceedings are closed forthwith, and the expenses incurred which cannot be defrayed by the estate, are paid by the person who demanded the opening of the proceedings. The creditor, however, who has demanded the opening of bankruptcy proceedings, may, when he entertains any doubt regarding this point, obtain a discharge from further liabilities by declaring in the record of the Bankruptcy Court that he considers the estate insufficient to defray the expenses necessary for the continuation of the proceedings, and consequently is unwilling to take such expenses at his charge, and if, at a meeting of creditors convened for this purpose, no other creditors declare themselves willing to take at their charge the expenses necessary for the continuation of the proceedings, he can demand that the proceedings shall be closed forthwith.

98. After the period for notification of the report mentioned in § 85 has expired, the debtor at any later stage of the proceedings can obtain free disposal of his estate, when he produces before the Bankruptcy Court a written consent from those creditors who have given notice of their claims. The proof of a creditor having obtained payment in full for the claim of which he has given notice is equivalent to a consent on his part.

99. In general, bankruptcy proceedings are brought to a close either by way of a composition confirmed by the Bankruptcy Court, or by way of the distribution of dividends brought about by this tribunal.

#### Chapter XIII. Composition.

100. If the debtor is a trader, manufacturer or shipowner, he is entitled to demand that negotiations with a view to obtaining a composition shall be opened in accordance with the rules given below.

101. The negotiations regarding a composition contemplated by § 100 may not, however, take place: a) when the debtor has previously been bankrupt, unless he proves that he has paid his creditors, either during the bankruptcy or subsequently, at least at the rate of 75 per cent. of the amount of their claims; — b) when the debtor does not remain present during the proceedings of the bankruptcy, unless his absence is authorised by the Bankruptcy Court; — c) when the debtor, without giving sufficient reason for such omission, after having been repeatedly called upon, has omitted to produce the statement required according to § 47, or when he deliberately refuses to give the information prescribed by §§ 54, 72 and 78, or in some other manner deliberately refuses to comply with the provisions of this Act; — d) when the debtor is being prosecuted by reason of his conduct with regard to the bankruptcy, so long as he has not been acquitted by a final judgment; — e) when the Bankruptcy Court, as a result of the investigation undertaken in pursuance of § 79, is of opinion that the debtor's conduct has been thoughtless and irregular, even when there is not sufficient reason to institute a criminal prosecution against him; — f) when the debtor either

*To § 100.* In this connection § 39 of the Act of 14 April 1905, on compositions outside bankruptcy must be noted, which provides that the right of traders, manufacturers and shipowners, established by Chapter 13 of the Bankruptcy Act, with a view to obtaining a composition during bankruptcy, shall — when due notice is taken of the rules prescribed in the said Act, in so far as such rules do not particularly bear on the debtor's capacity as a trader, manufacturer or shipowner — also apply to other traders than those mentioned.

ført Handelsbøger, eller naar han har und ladt paa behørig Maade at opgjøre aarlig Status, saaledes som i § 148 er befaleet; — g) naar Skyldneren har undladt at erklære sig fallit, uagtet han dertil var forpligtet (§ 46).

Er Forhandling om Akkord begyndt, bliver den at stille i Bero, dersom Skyldneren senere maatte blive sat under Tiltale for saadant Forhold, som er nævnt ovenfor under Litra d.

**102.** Vil Skyldneren tilbyde Akkord, er han, forsaavidt han ikke ifølge § 101 herfra er udelukket, berettiget dertil, naar han inden Udlobet af Anmeldelsesfristen (§ 85) indleverer skriftligt Forslag i saa Henseende til Skifteretten. Efter den nævnte Tid kan det i det i § 101 Litra d omhandlede Tilfælde af Skifteretten tilstedes Skyldneren at tilbyde Akkord, saasnart han ved endelig Dom er frifunden.

Fremdeles kan Skyldneren, dog ikke mere end een Gang, paa senere Trin af Konkursbehandlingen, saalænge ikke den endelige Udlodning har fundet Sted, fordre sig stedet til at tilbyde Akkord, naar han for Skifteretten fremviser skriftligt Samtykke hertil fra saa mange af Fordringshaverne, som baade i Tal og Vægt svare til over Halvdelen af de anmeldte Krav.

Det skriftlige Akkordforslag bliver at udlægge til Eftersyn paa samme Maade, som i § 86 er bestemt om Anmeldelserne, og offentlig Bekjendtgjørelse herom i de i § 52 omhandlede offentlige Blade finder Sted.

**103.** Naar Skyldneren inden Anmeldelsesfristens Udlob har tilbudt Akkord paa den i den foregaaende Paragraf omhandlede Maade, skal han, saasnart Gjennemgaaelsen af de anmeldte Fordringer er tilendebragt, personlig eller, om han er hindret ved lovligt Forfald, da ved en Anden, som ved skriftlig Fuldmagt er bemyndiget til at slutte Akkord paa hans Vegne, fremsætte sit Forslag. Kurator gjør derpaa Fordringshaverne bekjendte med den af ham efter § 78 udarbejdede Oversigt saavel som med den af ham efter § 79 gjorte Indberetning til Skifteretten og tilkjendegiver i Henhold hertil og de iøvrigt foreliggende Oplysninger sin Formening om, hvorvidt Akkordforslagets Antagelse er stemmende eller ikke med Fordringshavernes Tarv.

Fremkommer Akkordforslag senere, skal det behandles i en særlig hertil indvarslet Skiftesamling, men iøvrigt paa samme Maade.

**104.** Gjør Skyldneren ved Modet Forandringer i sit Forslag, blive disse nøiagtig at fore til Protokollen. Det endelige Forslag bliver derefter af Skifteretten undergivet de mødende Fordringshaveres Afstemning, hvilken nøiagtig føres til Protokollen.

**105.** I Spørgsmaalet om Akkordens Antagelse have Panthavere og de med Fortrinsret forsynede Fordringshavere ikkun Stemmeret for den Del af deres Fordringer, for hvilken de frafalde Panteret eller Fortrinsret.

**106.** Fra Afstemningen om Akkordspørgsmaalet udelukkes Fordringshavere, som ere Skyldnerens Ægtefælle, Beslægtede i op- og nedstigende Linie, Sødskende eller ligesaa nær Besvøgrede, ligesaavel som Fordringshavere, der have faaet de Fordringer, for hvilke de optræde i Boet, tiltransporterede efter Konkursens Begyndelse.

**107.** De Fordringshavere, hvis Fordringer ere bestridte, deltage foreløbig i Afstemningen om Akkordforslaget (§ 110).

**108.** Forat Akkordforslaget kan anses for at være antaget, maa i ethvert Tilfælde følgende to Betingelser være tilstede: 1. Idetmindste to Trediedele af de tilstedeværende i Akkordspørgsmaalet stemmeberettigede Fordringshavere maa erklære sig for Akkordforslagets Antagelse; — 2. Det samlede Beløb af de Fordringer, hvis Ihændehavere antage Akkordforslaget, maa udgjøre mindst tre Fjerdedele af det samlede Beløb af alle de Fordringer, som give Ret til at deltage i Afstemningen om Akkordforslaget.

Gaar Akkordforslaget ikke ud paa at tilbyde de simple personlige Kreditorer mindst 50 pCt. af deres Fordrings Beløb, udkræves derhos, at mindst tre Fjerdedele af de tilstedeværende stemmeberettigede Fordringshavere erklære sig derfor.

has kept no commercial books, or has omitted to draw up a regular balance-sheet as required according to § 148; — g) when the debtor has omitted to declare himself bankrupt, although he was under an obligation to do so (§ 46).

When the negotiations with a view to a composition have been commenced, such negotiations are closed if the debtor is subsequently prosecuted owing to such conduct as is mentioned under letter d.

**102.** If the debtor desires to offer a composition, he is entitled to do so, in so far as he is not excluded from doing so according to § 101, when he hands in a written proposal to this effect to the Bankruptcy Court before the expiration of the period fixed for giving notice of claims (§ 85). After the expiration of the said period, the Bankruptcy Court, in the case mentioned in § 101 letter d, may permit the debtor to offer a composition as soon as he is acquitted by a final judgment.

Furthermore, the debtor, but not, however, more than once, at later stages of the bankruptcy proceedings, so long as no final distribution of dividends has taken place, is entitled to ask permission to offer a composition, when he produces before the Bankruptcy Court a written consent to such a course from so many of his creditors as both in number and importance exceed half the claims of which notice has been given.

The written proposal with a view to a composition shall remain for examination by the interested persons in the same manner as is prescribed by § 86 with regard to the notifications of claims, and a publication to this effect shall take place in the newspapers as mentioned in § 52.

**103.** When the debtor, within the period prescribed for giving notice of claims, has made a proposal of composition in the manner indicated in the preceding Article, he shall in person, or, if he is prevented for some valid reason, by means of a third person who is authorised to conclude a composition on his behalf, present his proposal, as soon as the verification of the claims presented is closed. The trustee thereupon communicates to the creditors the statement drawn up by him in pursuance of § 78, as well as the report made by him to the Bankruptcy Court according to § 79, and on the basis of these documents, and other available information, he gives his opinion as to whether the acceptance of the proposed composition is in harmony or not with the interests of the creditors.

If a proposal with a view to composition is presented at a later period, such proposal shall be dealt with at a meeting of creditors specially convened for this purpose, but in the same manner.

**104.** If the debtor at the meeting modifies his proposal, his modifications shall be accurately put on record. The Bankruptcy Court shall then submit his final proposal to the vote of the creditors present, and the result of the voting shall be accurately recorded.

**105.** On the question of the acceptance of the composition, the pledge-holders and creditors having preferential rights have only a right to vote in connection with that part of their claims in regard to which they renounce the pledge-right or right of preference.

**106.** Such creditors as are the debtor's spouse, relatives in the ascending and descending line, cousins or persons as closely related by marriage, as well as those creditors who have had the claims in connection with which they have presented themselves in the bankruptcy transferred to them after the commencement of the bankruptcy proceedings, are excluded from taking part in the voting on the question of a composition.

**107.** Creditors whose claims are contested provisionally take part in the voting on the proposal of a composition (§ 110).

**108.** In order that the proposal of a composition may be considered as accepted, the two following conditions must in all cases be fulfilled: 1. At least two thirds of the creditors present having a right to vote on the proposal of a composition must declare themselves in favour of the acceptance of the proposal; — 2. The total amount of the claims of the creditors who accept the proposal of composition, must equal at least three fourths of the total amount of all the claims giving a right to take part in the voting thereon.

If the proposal of a composition does not purport to offer the simple personal creditors at least 50 per cent. of the amount of their claims, it is furthermore required that at least three fourths of the creditors present having a right to vote declare themselves in favour of it.

109. Opnaas i den Skiftesamling, hvori Akkordspørgsmaalet stilles til Afstemning, vel det fornødne Stemmeantal i Henseende til Personerne (§ 108, 1°, jfr. sidste Stykke) eller i Henseende til Fordringsbeløbet (§ 108, 2°), men ikke i begge Henseender, berammer Skifteretten et nyt Møde, som bliver at afholde senest inden 14 Dage, i hvilket Akkordspørgsmaalet paany sættes til Afstemning. Opnaas der ikke i dette Møde den i § 108 fordrede Stemme flerhed i begge Henseender, er Akkordforslaget forkastet.

110. Befindes det, at Stemmegivningens Resultat er forskjelligt, eftersom de bestridte Fordringer eller de af deres Ihænde havere afgivne Stemmer (§ 107) regnes med eller ikke, har Skifteretten efter at have anstillet nærmere Undersøgelse at bestemme, hvor mange af de bestridte Fordringer og for hvilket Beløb disse skulle komme i Betragtning ved Afstemningen; dog behøver Skifteretten selvfølgelig ikke at strække denne Undersøgelse længere end saa vidt, at Afstemningen giver et bestemt Resultat enten til Akkordens Antagelse eller Forkastelse, hvad enten de øvrige bestridte Fordringer regnes med eller ikke. Finder Skifteretten, at en saadan foreløbig Afgjorelse efter de bestridte Fordrings Beskaffenhed ikke kan finde Sted, erklærer den Akkordforslaget for forkastet.

Forinden Skifteretten afgiver sin heromhandlede Bestemmelse, kan den indhente Kurators Betænkning.

Denne Afgjorelse er uden Virkning med Hensyn til Fordringens Bedømmelse, dersom den senere maatte blive gjort til Gjenstand for Retstvist.

111. Privilegerede Fordringshavere kunne ikke ved Akkorden tvinges til noget Afslag i eller nogen Henstand med deres Krav; de maa, naar de ikke selv give Afkald derpaa, tilfredsstilles for deres Fordrings fulde Beløb, saasnart disse forfalde.

Fordringshavere, som indtage samme Plads i Konkursordenen, maa i Akkorden behandles paa lige Maade, medmindre Nogen særlig samtykker i at underkastes en mindre gunstig Behandling end de andre.

112. De Fordringshavere, hvis Krav ei ere anerkjendte, blive i Akkorden foreløbig at behandle ganske paa samme Maade, som om Kravet ikke var bestridt.

113. Afsluttet Akkord har ingen Indflydelse paa Fordringshaveres Rettigheder mod Forlovere og Andre, som hæfte tilligemed Skyldneren.

114. Panthavere berøres, forsaavidt deres Panteret angaar, ikke ved Akkorden.

115. Enhver udenfor eller ved Siden af Akkorden gjort Overenskomst, hvorefter der indrømmes nogen Kreditor i Boet større Fordele eller bedre Betingelser, end der aabenlyst er ham tilstaaet i Akkorden, er ugyldig.

116. Akkorden er, skjonndt antagen ved Fordringshavernes Afstemning, ikke gyldig, førend den er stadfæstet af Skifteretten.

117. Forinden Stadfæstelsen meddeles, har Skifteretten, snarest mulig efterat Afstemningen har fundet Sted, i de for Skiftebekjendtgjørelser i Almindelighed bestemte Aviser offentlig med mindst 6 Dages Varsel at opfordre dem, der maatte have Indsigelser at gøre mod Akkorden, til at fremsende skriftlig Protest senest 4 Dage førend den til Akkordens Stadfæstelse eller Negtelse bestemte Skiftesamling, hvilken ikke maa afholdes senere end 14 Dage efter den endelige Afstemning over Akkordforslaget.

118. Akkordens Stadfæstelse bliver, selv om ingen Indsigelse er fremsat, ved begrundet Kjendelse at negte: 1. naar de almindelige Betingelser for Akkord ikke ere tilstede eller de foreskrevne Regler med Hensyn til Fremgangsmaaden ved Akkordforhandlingen ikke ere iagttagne, eller naar andre i denne Lov foreskrevne Regler, som sigte til at sætte Kreditorerne i fuldstændig Kundskab om Boets Forhold, i noget væsentligt Punkt ere overtraadte eller tilsidesatte; — 2. naar Akkorden indholder Noget, som er i Strid med Bestemmelserne i denne Lovs §§ 111—115 eller iøvrigt er lovstridigt.

Derimod har Skifteretten ikke at indlade sig paa nogen Prøvelse af Billigheden eller Hensigtsmæssigheden af de til Akkordens Indhold hørende Bestemmelser, ligesaalidt som der kan tages Hensyn til herfra hentede Protester fra de enkelte Fordringshaveres Side.

**109.** If at the meeting of creditors at which the question of a composition is voted on, the required number of votes in regard to the persons (§ 108, 1; see the last paragraph) or in regard to the amount of the claims is certainly obtained (§ 108, 2), but not the required number in both respects, the Bankruptcy Court shall convene a fresh meeting which shall take place at the latest within fourteen days, at which the question of a composition shall again be submitted to voting. If at this meeting the majority required according to § 108 is not obtained in both respects, the proposal of a composition is rejected.

**110.** If it is found that the result of the voting is different according to whether the contested claims or the votes given by the persons making such claims are counted or not, the Bankruptcy Court, after having made further inquiries, shall decide how many of the contested claims and for what amount shall be considered at the voting; the Bankruptcy Court, however, of course need not extend this inquiry further than is necessary in order to ascertain whether the voting will give a definite result either in regard to the acceptance of the composition or its rejection, whether the other contested claims are counted or not. If the Bankruptcy Court is of opinion that such a provisional decision, owing to the nature of the contested claims, cannot take place, the Court shall declare the proposal of composition rejected.

Before the Bankruptcy Court gives its decision in regard to this point, it is entitled to hear the opinion of the trustee.

This decision does not affect the estimate of the claim if it is subsequently contested by means of a lawsuit.

**111.** Privileged creditors cannot by means of a composition be compelled to make any reduction or grant any delay in regard to their claims; they must, if they do not voluntarily renounce their rights, be paid the full amount of their claims as soon as these become due for payment.

Creditors whose claims are on the same footing in the bankruptcy shall be treated in the same manner in the composition, unless any of them in particular consents to be subjected to less favorable treatment than the others.

**112.** Those creditors whose claims have not been recognised must provisionally be treated in the composition in the same manner in all respects as if their claims had not been contested.

**113.** The conclusion of a composition does not affect the rights of the creditors as against sureties and other persons who are jointly liable with the debtor.

**114.** A composition does not affect pledge-holders in so far as their pledge-rights are concerned.

**115.** Any agreement made outside or beside the composition with a view to granting any creditor of the estate greater advantages or better conditions than those which have been openly granted him in the composition, is illegal.

**116.** A proposal of composition, although accepted by the vote of the creditors, is not valid until it has been confirmed by the Bankruptcy Court.

**117.** Before giving its confirmation, the Bankruptcy Court, as soon as possible after the voting has taken place, shall give public notice in the newspapers generally designated for publications in connection with bankrupts' and deceased persons' estates, with an allowance of a period of at least six days, calling upon those persons who have objections to make against the composition in question, to present their protests in writing at the latest four days before the meeting of creditors fixed for the confirmation or rejection of the composition, a meeting which must not be held later than fourteen days after the final voting on the proposal of the composition.

**118.** The confirmation of a composition, even when no objection has been made, shall be refused by way of a reasoned decision: 1. when the ordinary conditions on which a composition is based are not fulfilled, or the rules applicable to the proceedings of composition have not been observed, or when other provisions of this Act having in view that the creditors shall be fully informed of the position of the estate, have been violated or neglected in essential points; — 2. when the composition in question contains anything contrary to the provisions contained in §§ 111—115 of this Act, or in other ways is contrary to law.

On the other hand, it is not the function of the Bankruptcy Court to enter upon any examination as to whether the terms of the composition are equitable or appropriate, nor is it permitted to consider protests based on such points presented by any of the creditors.

119. Den af Skifteretten stadfæstede Akkord er at betragte som et imellem Skyldneren og de i Akkorden anerkjendte Fordringshavere indgaaet Retsforlig, og den har de et saadant tilkommende Retsvirkninger.

120. Den af Skifteretten stadfæstede Akkord er ogsaa bindende for de Fordringshavere, som ikke have meldt sig i Boet, forsaavidt de ikke have Pant eller anden Førtrinsret. Akkorden befrier Skyldneren for den Del af enhver for Konkursen stiftet Gjæld, som ikke ved Akkorden er overtagen, saavel ligeoverfor Fordringshaveren selv som ligeoverfor Forlovere og Andre, der tilligemed ham hæfte for Gjælden.

121. Efterat Akkorden er stadfæstet, kan Skyldneren, naar Skifteomkostninger og Skiftegebyrer ere behørig dækkede, fødre sig Boet overgivet til fri Raadighed, medmindre Akkorden maatte bestemme anderledes.

Dog bor Skifteretten paase, at de i Akkorden anerkjendte fortrinsberettigede Kreditorer, saavelsom de Kreditorer, der ifølge Akkorden skulle have Betaling forinden Boets Udlevering, erholde Fyldestgjørelse.

Naar Boet overgives Skyldneren til fri Raadighed, udsteder Skifteretten en Bekjendtgjørelse om Konkursens Ophør paa den i § 52 omhandlede Maade.

122. Kurator aflegger Regnskab for sin Forvaltning til Skyldneren, saasnart denne efter Akkorden har overtaget sit Bo. Dersom Regnskab ikke er aflagt og Kassebeholdningen afleveret inden 14 Dage efter Boets Udlevering, taber Kurator, forsaavidt Skifteretten ikke i Boets særlige Beskaffenhed maatte finde Anledning til at tilstaa ham en længere Frist, Ret til Honorar.

123. Dersom det inden 3 Aar efter Akkordens Stadfæstelse enten opdages, at Skyldneren med Hensyn til Konkursen har gjort sig skyldig i saadant Forhold, hvorfor Straffelovens §§ 260, 261 og 262, første Stykke, bestemme Straf, eller bevises, at en eller flere Fordringshavere hemmelig have enten af Skyldneren eller med hans Vidende og Villie af nogen Anden erholdt Fordele eller Løfte om Fordele fremfor de øvrige Fordringshavere for at fremkalde en Tvangsakkord eller fjerne Hindringerne for en saadan, da er Skyldneren pligtig til at betale til alle Fordringshavere, der ikke have deltaget i Misligheden, ogsaa de ham ved Akkorden eftergivne Dele af deres Fordringer, og han taber i Forhold til de samme Fordringshavere den ham ved Akkorden indrømmede Henstand, udenat dermed enten Forlovene for Akkorden løses fra de af dem overtagne Forpligtelser eller Fordringshaverne tabe nogen dem ved Akkorden indrømmet Rettighed.

## Kapitel XIV. Om Boets Udlodning, naar ingen Akkord finder Sted.

124. Snarest mulig, efterat Fordringernes Provelse har fundet Sted, skal Kurator gjøre Indberetning til Skifteretten om, hvilke af de anmeldte Fordringer der som privilegerede bør fyldestgøres af de Penge, som ere indkomne eller først indkomme. Finder Skifteretten det utvivlsomt, at disse Fordringer ville blive at fyldestgjøre fuldt ud, og have Panthaverne ikke forlods Ret til de Midler, hvorved de skulde dækkes, bør den strax give Udlæg for dem. Saasnart der, efterat de privilegerede Fordringer ere dækkede og det Fornødne er tilbageholdt til Skifteomkostninger, haves Midler, hvortil Panthaverne ikke have forlods Ret, indtil et Beløb af mindst 10 pCt. af den øvrige anmeldte Gjælds Kapitalbeløb, bør en første Udlodning ske. Saadan Udlodning gjentages siden, saa ofte der haves 10 pCt. af Gjældens Kapitalbeløb til Udlodning.

*ad § 119.* Der maa altsaa kunne gores Exekution paa Grundlag af en Udskrift af Akkorden, forsaavidt Retsprotokollen indeholder tilstrækkelig detaillerede Oplysninger om Kreditors Navn, Størrelsen af hans Fordring m. v. Det maa antages, at en Akkord ikke bortfalder, fordi de ved den givne Løfter ikke holdes (jvf. Lov om Tvangsakkord udenfor Konkurs § 32).



119. A composition confirmed by the Bankruptcy Court is considered as a judicial compromise concluded between the debtor and the creditors recognised in the composition, and has the legal effects which result from such a compromise.

120. A composition confirmed by the Bankruptcy Court is also binding on those creditors who have not presented their claims to the estate, provided they are not pledge-holders and have not any other preferential right. The composition discharges the debtor from that part of any debt incurred before the commencement of the bankruptcy which he has not taken at his charge in the composition, both as regards the creditors themselves and as regards sureties and other persons jointly liable with the debtor for the debt.

121. When a composition has been confirmed, the debtor, on sufficient disbursements having been made for the costs and expenses of the bankruptcy, is entitled to demand that the estate be placed at his free disposal, unless the composition in question provides to the contrary.

The Bankruptcy Court, however, shall see that the creditors having preferential rights and being recognised in the composition, as well as those creditors who according to the composition are to be paid before the estate is surrendered by the Bankruptcy Court, obtain satisfaction.

When the estate is placed at the debtor's free disposal, the Bankruptcy Court publishes an announcement in regard to the closing of the bankruptcy, in the manner indicated in § 52.

122. The trustee gives the debtor an account of his administration, as soon as on the conclusion of the composition the debtor has regained possession of his estate. If the account is not rendered, and the amount available in cash handed over, within fourteen days after the surrender of the estate, the trustee forfeits his right to remuneration, unless the Bankruptcy Court, owing to the special nature of the estate, finds a reason for granting him a longer period.

123. If, within three years after the confirmation of a composition, it is discovered that the debtor has been guilty of such conduct with regard to the bankruptcy as according to §§ 260, 261 and 262, first paragraph, of the Penal Code entails punishment, or if it is proved that one or more creditors secretly, either from the debtor or with his knowledge and consent from third persons, have obtained advantages or promises of advantages in preference to the other creditors, in order to bring about a composition or to remove the obstacles to a composition, the debtor is liable to pay to all those creditors who have not taken any part in the illegality also those parts of their claims for which he has obtained a discharge according to the composition, and he forfeits as regards the same creditors the extension of time granted to him in the composition, while at the same time the sureties for the composition are not released from the liabilities accepted by them, nor do the creditors lose any rights granted to them according to the composition.

#### Chapter XIV. The distribution of the assets when no composition takes place.

124. When the verification of the claims has taken place, the trustee shall as soon as possible send a statement to the Bankruptcy Court giving his opinion as to which of the claims presented, as being privileged ones, ought to be paid out of the money which has been received or which shall first be received. If the Bankruptcy Court is of opinion that there is no doubt as to whether these claims will be paid in full, and if the secured creditors have no right of preference in regard to the assets out of which they are to be paid, the Court ought forthwith to see that such claims are paid. If, after the privileged claims have been paid, and the necessary amount in cash has been retained with which to defray the costs of the liquidation, there are means available in regard to which the secured creditors have no right of preference, up to an amount of at least 10 per cent. of the capital of the other claims presented, a first distribution of dividends ought to take place. Such a distribution shall be repeated from time to time as often as 10 per cent. of the capital of the claims is available for distribution.

*To § 119.* Consequently, an execution may be carried out on the basis of an exemplification of the composition, provided the record of the court contains sufficient particulars regarding the creditor's name, the amount of his claim etc. The assumption is that a composition does not become void owing to the fact that the promises which it contains have not been fulfilled (see the Act on compositions outside cases of bankruptcy, § 32).

125. Naar der er Anledning til at foretage en første Udlodning, har Kurator derom at gjøre Indberetning til Skifteretten. Derefter har denne med Kurators Bistand at forfatte et Udkast til Udlodningen paa Grundlag af de Resultater, som ere fremkomne ved Fordringernes Provelse m. V. For de anmeldte Fordringer, angaaende hvilke Retstvist finder Sted, bliver den paa samme eller paa den Del af samme, Tvisten angaar, faldende Andel tilbageholdt, forat der kan forholdes med den paa den Maade, som ved endelig Dom eller Kjendelse maatte blive bestemt.

126. Udkastet til Udlodningen bor, dersom ikke alle Vedkommende erklære, at de antage det, henlægges hos Skifteretten til Eftersyn og Overveielse i 14 Dage inden hvilken Fristis Udløb enhver heri Interesseret kan henlede Opmærksomheden paa mulige Feil og Mangler i det. Om at Udkastet er fremlagt til Eftersyn, skal strax ske offentlig Bekjendtgjorelse i de i § 52 omhandlede offentlige Blade og særskilt Underretning meddeles Kurator. De fremkomne Bemærkninger tages under Overveielse af Skifteretten, som derefter affatter Udlodningen og fremlægger den i en Skiftesamling. Fra dette Tidspunkt af kunne Forandringer i den kun ske efter Paaanke.

127. Naar Paaankefristen<sup>1)</sup> er udloben, har Kurator at indberette, om nogen Ankestævning er ham forkyndt, hvorpaa Skifteretten afgjør, hvorvidt nogen iværksat Paaanke af Udlodningen medfører, at de i denne bestemte Udbetalinger i det Hele eller for en Del ikke for Tiden kunne foregaa, ligesom den bestemmer, hvorledes der skal forholdes, medens Udlodningen staar under Paaanke. Saalænge Paaankefristen ikke er udloben, maa ingen Udbetaling efter Udlodningen finde Sted.

128. Ved enhver Udlodning tages kun Hensyn til de Fordringer, som have været provede paa den Tid, da Skifteretten beslutter, at Udlodningen skal foretages. De Fordringshavere, hvis Fordringer blive provede senere, erholde ved den paafølgende Udlodning, forsaavidt Midler dertil haves, forlods Udlæg, svarende til, hvad de øvrige Fordringshavere allerede have faaet ved tidligere Udlodninger, og deltage derefter i Udlodningen som de øvrige.

129. Enhver, som ikke har paaanket en Udlodning, anses at have vedtaget dens Bestemmelser ogsaa for alle følgende Udlodninger. En Fordringshaver kan ikke paaanke en Udlodning, hvori han paa Grund af sin Fordrings for sildige Anmeldelse ikke har havt Adgang til at deltage, og mod senere Udlodninger kan han ikke fremsætte saadanne Indsigelser, som vilde gaa ud paa at omstøde, hvad der er anerkjendt paa tidligere Skiftesamlinger eller afgjort ved tidligere Udlodninger.

130. (Som ændret ved Lov Nr. 66 af 15 April 1887.)

De, der have Pant i Boets endnu ikke solgte Eiendele og have anmeldt deres Fordringer i Boet, have, naar Pantet erkjendes at være tilstrækkeligt, Ret til ved de partielle Udlodninger at fordre fuldt Udlæg for de til Betaling forfaldne Dele af deres Pantefordringer. Saadanne Afbetalinger give ikke andre Panthavere Ret til at optræde i foregaaende Prioritetshaveres Sted, om end saadan Ret ellers tilkommer de senere Panthavere, men Boet indtræder selv i enhver Panthavers Ret, for saa vidt angaar det Beløb, der saaledes er afbetalt paa hans Fordring. Er det uvist, om Pantet strækker til, afsættes for Panthaveren, om han har meldt sig, hvad enten hans Fordring er forfalden eller ikke, Udlæg som for de øvrige Fordringshavere, indtil det viser sig, hvorvidt Pantet strækker til. For den Del af Fordringen, som ikke fyldestgøres af Pantet, faar han udbetalt Udlæg lige med de øvrige Fordringshavere, og Resten af det Afsatte lægges igjen til Massen.

131. (Som ændret ved Lov Nr. 66 af 15 April 1887.)

Iøvrigt gives der ved Udlodningerne i Boet Udlæg ligesaavel for forfaldne som for ikke forfaldne Fordringer, jfr. dog § 130, første Punktum. Dog ansættes en ikke forfalden Fordring, naar den bærer en ringere Rente end 4 pCt., kun til det Beløb, som den med Fradrag af Mellemrente er værd i det Øieblik, Udlodningen sker.

<sup>1)</sup> Om Paaankefristens Længde, se § 141.

**125.** When there is occasion to proceed to a first distribution, the trustee shall send a report to the Bankruptcy Court to this effect. The Court, assisted by the trustee, shall then draft a scheme of the distribution on the basis of the results obtained through the verification of the claims, etc. With regard to the claims presented as to which an action has been brought, the dividend allotted to them, or to the portion of them to which the dispute refers, is retained in order that it may be dealt with in accordance with what may be determined by the final judgment or decision.

**126.** The scheme of the distribution, if all the interested persons do not declare that they accept it, shall remain for examination and consideration for fourteen days at the Bankruptcy Court, until the expiration of which period any interested person is entitled to call attention to possible errors and defects which the scheme may contain. If the scheme remains at the Court for examination, a publication to this effect shall forthwith be inserted in the public newspapers mentioned in § 52, and the trustee shall be specially informed of the circumstance. The observations presented with regard to the scheme are examined by the Court, which then finally draws up the scheme and submits it to a meeting of creditors. From this date alterations in the scheme can only take place by means of an appeal.

**127.** When the period for appeal<sup>1)</sup> has expired, the trustee shall report as to whether he has received any summons of appeal, whereupon the Bankruptcy Court shall decide whether any appeal presented bearing on the scheme of distribution has as a consequence that the payments fixed in the scheme, either wholly or in part, cannot be made for the present, and the Court shall also decide as to the method of proceeding while the scheme of distribution is under appeal. Before the expiration of the period for appeal no payment fixed according the scheme of distribution shall take place.

**128.** At each distribution of dividends, only such claims are considered as have been verified at the time when the Bankruptcy Court decides that the distribution shall take place. The creditors whose claims are verified at a later time obtain at the succeeding distribution, in so far as the means are available, preferential payments corresponding to what the other creditors have already obtained at previous distributions, and subsequently thereto take part in the distribution like the others.

**129.** Any interested person who has not appealed against a scheme of distribution, is considered as having accepted its provisions in regard to subsequent distributions also. A creditor is not entitled to appeal against a distribution in which, owing to his claim having been presented too late, he has had no opportunity to take part, and in regard to later distributions he is not allowed to present such objections as may result in reversing what has been recognised at previous meetings of creditors or decided at previous distributions.

**130.** (As modified by Act No. 66 of 15 April 1887.)

Persons holding pledges or mortgages on property and objects belonging to the estate which have not yet been sold, who have presented their claims to the estate, are, when their pledges or mortgages are recognised as sufficient, entitled to demand at the partial distributions full payment of such parts of their secured claims as are due for payment. These part payments do not entitle other secured creditors to succeed to the right of priority of precedent privileged creditors, although ulterior secured creditors generally have such a right, but the estate itself is subrogated to the right of every secured creditor in so far as concerns the part payments which he has received in this manner on his claim. When it is uncertain whether the security is sufficient, a dividend similar to that of the other creditors is set aside for the secured creditor in case he has presented his claim, whether his claim is due for payment or not, until it has been established to what extent the security is sufficient. For that part of the claim which is not covered by the pledge or mortgage, he receives a dividend on an equal footing with the other creditors, and the remainder of the amount reserved for him is again added to the assets.

**131.** (As modified by Act No. 66 of 15 April 1887.)

As a general rule, when the distributions of the assets take place, dividends are granted both for claims which are due and for those which are not due; see, however, § 130, first paragraph. A claim, however, which is not due, yielding an interest inferior to 4 per cent., is only estimated at the amount which it is worth at the time of the distribution, after deduction has been made of the interim interest.

<sup>1)</sup> With regard to the duration of the period for appeal, see § 141.

132. Naar Udlæg er givet, men Summen paa Grund af uafgjorte Tvistigheder eller andre Omstændigheder ikke udbetales, skal den gjøres frugtbringende i en Bank, Sparekasse eller anden solid Pengeindretning. De paa denne Maade indvundne Renter komme i sin Tid enten den, der har faaet Udlæget, eller Massen tilgode.

133. Saasnart hele Boets Masse er realiseret og alle Tvistigheder om, hvorledes den skal fordeles m. V., afgjorte, optages Boet af Skifteretten til endelig Udlodning og Slutning. Om Boets Slutning udfærdiges Bekjendtgørelse af Skifteretten paa den i § 52 bestemte Maade, ligesom der uophødelig gives Kurator Underretning derom.

134. Dersom efter Boets Slutning Eiendele tilfalde eller falde tilbage til Konkursmassen, blive disse at gøre i Penge og Beløbet ved en Efterlodning at fordele mellem Fordringshaverne, udenat ny Indkaldelse af disse finder Sted, medmindre Skifteretten finder særlig Grund hertil. At Efterlodning er sket, bekjendtgøres af Skifteretten paa den i § 52 bestemte Maade.

135. Fordringshaverne beholde deres Ret mod Skyldneren, forsaavidt angaar den Del af deres Fordringer, som de ikke faae betalt ved Udlodningerne.

#### IV.

### Kapitel XV. Om Maaden, hvorpaa Anker over Skifterettens Handlinger gjøres gjældende.

136. Med Hensyn til Paaanke af Skifterettens Handlinger og Beslutninger har det sit Forblivende ved den gjældende Ret med de i de efterfølgende Paragrafer foreskrevne Lempelser og nærmere Bestemmelser.

137. Paaanke kan ikke finde Sted i Anledning af de af Skifteretten truffene Bestemmelser ifølge §§ 53, 56, 57, 58, 60, 61, 65, andet Punktum, 66, 68, 70, 71, 74, 75, 78, 83, sidste Punktum, 102, første Stykkes andet Punktum, 110, 122 og 127.

138. Den Beslutning af Skifteretten, hvorved en antagen Akkord forkastes, kan paaankes, naar herom er Enighed imellem saa mange af de Fordringshavere, der have antaget Akkorden, at deres erkjendte Fordringer tilsammen udgjøre over Halvdelen af samtlige erkjendte Fordrings hele Beløb. Beslutningen om Paaanke maa af Fordringshaverne fattes i samme Skiftesamling, hvori Stadfæstelsen er negtet, eller ogsaa maa en Tilkjendegivelse om at ville paaanke, undertegnet af det fornødne Antal, indgives senest to Uger efter. Paaanken iværksættes da efter Stævning til Kurator paa Boets Vegne.

Endvidere kan ogsaa Skyldneren paaanke Skifterettens Beslutning, hvorved Akkordens Stadfæstelse negtes.

139. Den Beslutning af Skifteretten, hvorved Akkorden er stadfæstet, kan ikke ved Paaanke omstødes, undtagen forsaavidt Anken støttes paa, at § 117 ikke er iagttagen, eller at Stadfæstelsen burde have været negtet ifølge § 118 Nr. 1 og 2.

140. De i § 48, andet Stykke, § 138 og § 139 omhandlede Beslutninger indankes altid lige til Høiesteret.

141. I de i den foregaaende Paragraf omhandlede Tilfælde er Paaankefristen 6 Uger. Iøvrigt er Paaankefristen saavel for Skifterettens Kjendelser, Udlodninger og andre Beslutninger som for de i Anledning af saadanne Retshandlingers Paaanke afsagte Overrettsdomme i Overensstemmelse med den gjældende Ret 12 Uger. Opreisning kan kun bevilges under særegne Omstændigheder og aldrig, efterat der er hængaet Aar og Dag efter Paaankefristens Udlob.

142. Ankestævningen forkyndes paa Boets Vegne for Kurator eller, hvis ingen saadan er beskikket, for Skifteretten.

Sagerne ere ligesom hidtil anteciperede til Foretagelse i Høiesteret.

132. When a dividend has been declared, but owing to unsettled disputes or other circumstances, the amount is not paid, it shall be rendered productive in a bank, savings bank or other solvent financial institution. The interest acquired in this manner, in due time accrues either to the person who has been granted the dividend, or to the assets.

133. When all the assets of the estate have been realised, and all the disputes bearing on their distribution, etc. have been settled, the Bankruptcy Court proceeds to the final distribution and the winding-up of the estate. The closing of the bankruptcy is published by the Court in the manner indicated in § 52, and the trustee is forthwith informed of the occurrence.

134. If, after the winding-up of the estate, any objects accrue to or are returned to the assets of the bankruptcy, such objects shall be disposed of for cash, and the amount obtained shall be distributed amongst the creditors by a supplementary distribution. The creditors are not convened again for this purpose, unless the Bankruptcy Court is of opinion that there is some special reason for such a course. The Court publishes in the manner indicated in § 52, that the supplementary distribution has taken place.

135. The creditors retain their rights as against the debtor in regard to that part of their claims which has not been paid to them in the distributions.

#### IV.

### Chapter XV. The manner in which appeals are presented against the proceedings of the Bankruptcy Court.

136. In regard to appeals against the proceedings and decisions of the Bankruptcy Court, the law now in force will continue to apply with the modifications and rules as to details indicated in the following Articles.

137. An appeal cannot take place in regard to the decisions of the Bankruptcy Court rendered according to §§ 53, 56, 57, 58, 60, 61, 65, second sentence, 66, 68, 70, 71, 74, 75, 78, 83, last sentence, 102, the second sentence of the first paragraph, 110, 122, 127.

138. A decision of the Bankruptcy Court rejecting an accepted composition may be appealed against when an agreement on this point is arrived at amongst so many creditors who have accepted the composition in question, that the total amount of their recognised claims exceeds half of the total amount of all the recognised claims. The creditors have to decide as to an appeal at the same meeting of creditors at which the projected composition is rejected, or a declaration signed by the requisite number, to the effect that the rejection will be appealed against, must be presented to the Court at the latest within two weeks of such rejection. The appeal is then instituted by means of a summons issued to the trustee as representative of the estate.

The debtor may also appeal against the decision of the Bankruptcy Court refusing to confirm the composition.

139. A decision of the Bankruptcy Court confirming a composition cannot be rescinded by means of an appeal, unless the appeal is based on the fact that § 117 has not been observed, or that the confirmation ought to have been refused according to § 118 Nos. 1 and 2.

140. The decisions dealt with in § 48, second paragraph, § 138 and § 139, are appealed against direct to the Supreme Court.

141. The period for appealing in the cases dealt with in the preceding article is six weeks. As a general rule the period for an appeal, as well in the case of the decisions of the Bankruptcy Court, the distributions of dividends and other resolutions, as in the case of judgments of the Appeal Courts rendered on an appeal against such decisions etc., is twelve weeks according to the law now in force. Re-instatement can only be granted under special circumstances, and never when a year and a day have elapsed since the expiration of the period for the appeal.

142. The summons of appeal is addressed to the trustee as representative of the estate or, when no such official has been appointed, to the Bankruptcy Court.

As heretofore, these matters are dealt with in preference to others when taken before the Supreme Court.

143. Er den Beslutning, hvorved Akkorden stadfæstes, paaanket, maa Boet ikke forinden Spørgsmaalets endelige Afgjørelse udleveres til Skyldneren, medmindre der drages Omsorg for at sikkre den Paaankende. En Ankestævning, der ikke paaberaaber sig nogen af de i § 139 omtalte Ankegrunde, hindrer ikke Boets Udlevering til Skyldneren.

### Kapitel XVI. Forskjellige Bestemmelser.

144. Skyldnerens Død, medens hans Bo staar under Konkursbehandling, hindrer ikke, at der med Boets Behandling og Opgjørelse fortsættes paa den i denne Lov foreskrevne Maade. Hans Arvinger kunne i hans Sted tilbyde og indgaa Akkord med samme Retsvirkning, som om den var indgaaet af Skyldneren selv.

145. Hvor Skifte mellem levende Ægtefæller eller mellem den længstlevende Ægtefælle, der hæfter for Boets Gjæld, og den Forstafdødes Arvinger foregaar ved Skifteretten, kan enhver Fordringshaver forlange Boet behandlet i Overensstemmelse med Bestemmelserne i dette Afsnit, saafremt vedkommende Ægtefælle befinder sig i noget af de Tilfælde, som efter denne Lov give Ret til at fordrø Konkursbehandling anvendt imod ham eller hende; i Dødsboer, hvor Gjæld ikke vedgaas af Arvingerne, har enhver Fordringshaver Ret til at forlange Konkursbehandling i Overensstemmelse med Bestemmelserne i dette Afsnit, naar Dødsboet er insolvent. De i §§ 20, 21, 23, 26 og 27 ommeldte Frister beregnes da i Forhold til det Tidspunkt, da Boet blev taget under Skiftebehandling. Naar præklusivt Proklama paa den Tid, Boet overgaar til Behandling efter denne Lov, var bekendtgjort, men ikke udlobet, bliver det uden Virkning, og Fordringshaverne blive paany at indkalde i Overensstemmelse med denne Lov; er til den nævnte Tid Proklama udlobet, beholder det sin præklusive Virkning.

146. Er et saadant Bo, som i den foregaaende Paragraf omhandles, ikke begjært taget under Konkursbehandling, men det dog viser sig insolvent, blive de i Kapitlerne 1, 2, 3, 5 og 14 indeholdte Regler at anvende med de Lempelser, der flyde af Forholdets Natur.

147. Fallitboers Behandling ved Kommissarier bortfalder, forsaavidt angaar de Boer, der tages under Skiftebehandling, efterat denne Lov er traadt i Kraft. Dog kan Kongen undtagelsesvis, naar Begjæring derom maatte indkomme, med Indvilligelse af samtlige de paa en dertil berammet Skiftesamling mødende Fordringshavere, beskikke Skiftekommissarier til istedetfor den almindelige Skifteret at forestaa Behandlingen og Opgjørelsen af et Fallitbo, der befindes at være af en ganske særegen vidtloftig og indviklet Beskaffenhed.

148. Enhver, som ifølge denne Lov er at anse som Handlende, Skibsrheder eller Fabrikant<sup>1)</sup>, skal være forpligtet til een Gang hvert Aar at opgjøre en Status over sine Aktiver og Passiver samt at indføre den i sin Hovedbog eller i en til dette Oiemed indrettet Statusbog, der autoriseres uden Betaling, og til hvilken der ikke behøves stemplet Papir.

Dersom den, hvis Bo kommer under Konkursbehandling, befindes paa uredelig Maade eller i svigagtig Hensigt at have opgjort en Status, som ikke stemmer med de virkelige Forhold, eller at have af Skjodesløshed eller Forsømmelighed undladt at opgjøre Status eller ved dens Opgjørelse at have gjort sig skyldig i grove Uordener eller Uagtsomheder, straffes han henholdsvis efter første eller andet Stykke i Straffelovens § 262<sup>2)</sup>.

149. I Kjøbenhavn blive Handlendes, Fabrikanters og Skibsrheders<sup>3)</sup> Boer, der tages under Konkursbehandling efter denne Lov, at behandle af So- og Handels-

*ad § 147.* Her maa tillige nævnes, at Lov Nr. 64 af 28 Maj 1880 om Spare- og Laanokasser § 8, 2 St. bestemmer, at, hvor en Sparekasse kommer under Konkursbehandling, kan Kongen gennem Justitsministeren anordne Boets Behandling ved Kommissarier, selv om Betingelserne i Konkurslovens § 147 ikke ere tilstede.

<sup>1)</sup> Se § 45. — <sup>2)</sup> Vedkommende mister derhos Adgangen til Opnaaelse af Tvangsakkord under Konkursbehandling, se § 101 f. — <sup>3)</sup> Se § 45.

**143.** If the decision confirming a composition has been appealed against, the estate **must not** be placed at the debtor's disposal until the litigation has been finally settled, unless the rights of the appellant have been guaranteed. A summons of appeal not based on any of the grounds of appeal mentioned in § 139, does not prevent the estate from being again placed at the debtor's disposal.

### Chapter XVI. Miscellaneous provisions.

**144.** The death of the debtor occurring while his estate is in the hands of the Bankruptcy Court, does not prevent the liquidation of the estate from being proceeded with according to the provisions of this Act. His heirs, in his place, may offer and conclude a composition with the same legal effect as if it had been concluded by the debtor himself.

**145.** Where the partition of an estate between husband and wife who are both alive, or between the surviving consort who is liable for the debts of the estate and the heirs of the deceased consort, is in the hands of the Distribution Tribunal, any creditor, provided the consort in question is in one of the cases which according to this Act entitles him to demand that bankruptcy proceedings shall be applied against him or her, is entitled to demand that the estate shall be dealt with according to the provisions of this Section; in the case of estates of deceased persons where the heirs are not personally liable for the debts of the estate in question, any creditor is entitled to demand that bankruptcy proceedings shall be applied according to the provisions of this Section, provided the deceased's estate is insolvent. The periods mentioned in §§ 20, 21, 23, 26 and 27 are in such cases calculated according to the date on which the estate has been submitted to the proceedings of the Court. When a preclusive proclamation has been published at the time when the estate is submitted to the Court according to this Act, but the period fixed according to such proclamation has not then expired, it becomes void, and the creditors are again convened according to this Act; if the period fixed by the proclamation in question has expired at the said date it retains its preclusive effect.

**146.** If no creditor requests the application of bankruptcy proceedings to an estate such as is dealt with in the preceding Article, but such estate is nevertheless proved to be insolvent, the provisions of Chapters 1, 2, 3, 5 and 14, subject to the modifications resulting from the nature of the circumstances, apply.

**147.** The liquidation of bankruptcy estates carried out by commissaries no longer takes place in so far as those estates are concerned which become subject to bankruptcy proceedings after the date on which this Act comes into force. In exceptional cases, however, the King, when a request to this effect has been presented, with the consent of all the creditors present at a meeting of creditors convened for this purpose, appoints commissaries who, in the place of the ordinary Bankruptcy Court, direct the proceedings and undertake the liquidation of a bankruptcy estate if the estate in question is found to be particularly large and complicated.

**148.** Any person who within the meaning of this Act is considered to be a trader, shipowner or manufacturer<sup>1)</sup>, is bound once in every year to draw up a balance-sheet of his assets and debts and to enter the same in his ledger, or in the balance book instituted for this purpose, which is authorised free of charge, and for which stamped paper is not required.

If a person whose estate is submitted to bankruptcy proceedings is found to have drawn up a balance-sheet not corresponding to facts in a dishonest manner or with a fraudulent object in view, or owing to inattention or negligence to have omitted drawing up a balance-sheet, or when drawing it up to have been guilty of serious irregularities or carelessness, he shall be punished according to the first or second paragraph of § 262<sup>2)</sup> of the Penal Code.

**149.** In Copenhagen the estates of traders, manufacturers and shipowners<sup>3)</sup> subjected to bankruptcy proceedings according to this Act, are dealt with by the

*To § 147.* It, furthermore, must be observed that Act No. 64 of 28 May 1880 concerning savings and loan banks, § 2, 2nd paragraph, provides that where a savings bank is subjected to bankruptcy proceedings, the King, through the Minister of Justice, may order that the estate shall be administered by commissaries, even when the provisions of the Bankruptcy Act, § 147 do not apply.

<sup>1)</sup> See § 45. — <sup>2)</sup> The person in question, furthermore, forfeits his right to obtain a composition during the bankruptcy proceedings; see § 101f. — <sup>3)</sup> See § 45.

retten, hvis Medlemsantal med Hensyn hertil forøges med 5 handelskyndige Medlemmer og en retskyndig Næstformand. Næstformandens Post beklædes af et Medlem af Landsover- samt Hof- og Stadsretten, som beskikkes til tillige at fungere i denne Egenskab.

De nærmere fornødne Bestemmelser angaaende Udførelsen af de So- og Handelsretten herved paalagte nye Forretninger fastsættes ved kongelig Anordning<sup>1)</sup>.

150. Bestemmelserne i dette Afsnit komme ikke til Anvendelse paa de Boer, som paa den Tid, Loven træder i Kraft, ere tagne under Behandling.

## Andet Afsnit. Nogle Bestemmelser om Pant m. m.

### Kapitel XVII.

151. Villiesbestemt Pant i Alt, hvad Pantsætteren eier eller eiendes vorder, kan for Fremtiden ikke retsdyldig stiftes.

152. Ei heller kan villiesbestemt Underpant i Løsøre for Fremtiden gives i Samlinger af ensartede eller til et fælles Brug bestemte Ting, der betegnes ved almindelige Benævnelser.

Ved Forpagtninger af Landeiendomme og Meierier samt ved anden Leie af Jord skal Leietageren dog retsdyldig kunne give Underpant i sine til Bedriftens Udovelse hørende Eiendele samt i Produkterne af Bedriften for de Krav, som Udleieren i Anledning af Brugsforholdet maatte have eller faae paa ham.

153. Fremdeles skal den i Forordningen af 28de Juli 1841 § 3 givne Forskrift være anvendelig med den Udvidelse, at det ved Pantsætningen af Landeiendom endvidere kan vedtages, at den til enhver Tid paa Eiendommen værende Gødning og Afgrøde i Straa, Hø og utærsket Sæd tillige skal være indbefattet i Pantet. Iligemaade skal det ved Pantsætning af Fabriker eller andre Bygninger til industrielle Anlæg være tilladt at vedtage, at Maskiner eller andet Driftsmateriel og Driftsinventarium skal anses som Tilbehør til paagjældende faste Eiendom.

154. Iøvrigt vedblive de i Lovgivningen, navnlig Forordningen af 28de Juli 1841, indeholdte Bestemmelser om Underpant i Løsøre at gjælde.

155. Haandpanthaveren skal, hvor Andet ikke er vedtaget, være beføiet til, istedetfor at gaa frem efter Danske Lovs 5—7—2 og 3, at iværksætte Pantets Realisation ved offentlig Auktion eller, forsaavidt angaar saadanne Værdipapirer, som have Kurs paa Kjøbenhavns Børs, ved Salg ved en Vexelmægler, efter derom vidnefast at have advaret Pantsætteren med 8 Dages Varsel eller, dersom denne ikke kjendes eller hans Bopæl ikke vides, efter med 14 Dages Varsel at have indkaldt Vedkommende til at løse Pantet ved en offentlig Bekjendtgjørelse i de til andre retslige Kundgjørelser bestemte Aviser.

156. Bestemmelsen i Danske Lovs 5—7—1 om, at Kreditor taber sin Fordring, dersom Pantet ved Ulykkestilfælde forkommer, ophæves.

157. Danske Lovs 5—3—18 og 1—24—26 med de Bestemmelser i senere Lovbud, som dertil slutte sig, ophæves, forsaavidt de angaa Domme, Forlig, Maning og Indstævning til Hoiesteret.

158. Naar udlagt Løsøre forbliver i Skyldnerens Besiddelse, taber Udlægshaveren sin af Udlaget flydende Ret overfor Skyldnerens Kreditorer i Tilfælde af Konkurs eller senere Udlæg, naar han ikke inden 12 Uger efter Udlægsforretningens Slutning iværksætter Tvangsauktionen eller under en Gjenoptagelse af Fogedforretningen faar det Udlagte bragt ud af Skyldnerens Besiddelse, medmindre han ved Paaanke eller ved Trediemands Ret har været hindret heri.

159. Om Pant og lignende Rettigheder i Skibe gjælde iøvrigt de særegne i Søretten hjemlede Regler.

<sup>1)</sup> Kgl. Adg. 19 Juli 1872.



Maritime and Commercial Tribunal, the members of which for this purpose are augmented by five experts in commercial matters and a vice-president who is a lawyer. The place of the vice-president is filled by a member of the Superior Regional Court and Town Tribunal, who is appointed to hold this position also.

The details of the necessary regulations regarding the carrying out of the new business imposed upon the Maritime and Commercial Tribunal in this connection, shall be fixed by Royal Ordinance<sup>1)</sup>.

150. The provisions of this Section do not apply to such estates as at the time when this Act comes into force have already been subjected to bankruptcy proceedings.

## Second Section. Some provisions regarding pledge etc.

### Chapter XVII.

151. Pledges and mortgages by agreement in regard to all the present and future property of the debtor, will henceforth not be valid according to law.

152. Nor shall hypothecations of movables by agreement in future be applied to collections of objects which are similar or destined for use in common and which are designated by general terms.

In the case of leases of landed property and dairies, and other ways of hiring land, the lessee may, however, legally hypothecate all the objects requisite for the exercise of his exploitation, and the produce of such exploitation, for claims which the lessor may have or acquire against him in connection with the lease or tenancy agreed upon.

153. Furthermore, the regulation made in the Ordinance of 28 July 1841, § 3, shall apply with the extension that, when landed property is mortgaged, it may furthermore be stipulated that the manure and crop consisting of straw, hay and unthreshed seed at any time available shall also be included in the mortgage. Similarly, when factories or other buildings used for industrial purposes are mortgaged, it shall be permissible to stipulate that machinery or other plant and fixtures shall be considered as accessories of the immovables in question.

154. As a general rule, the provisions of the law, and notably those of the Ordinance of 28 July 1841, with regard to hypothecations of movables, will continue to apply.

155. A pledge-holder, where nothing has been stipulated to the contrary, instead of proceeding according to the provisions of the Danish Law 5—7—2 and 3, shall be entitled to realise the pledge by public auction, or, in so far as such negotiable securities are concerned as are offered for sale at the Exchange of Copenhagen, by means of a sale concluded by a bill of exchange broker, after having in the presence of witnesses given the debtor eight days' notice to this effect, or if the debtor is not known or his residence is unknown, after having by means of a publication in the newspapers fixed for legal publications, given the interested person notice to redeem the pledge within fourteen days.

156. The provision of the Danish Law 5—7—1 to the effect that the creditor forfeits his claims when the pledged object is accidentally destroyed, ceases to apply.

157. The provisions of the Danish Law 5—3—18 and 1—24—26, together with the provisions of later Acts bearing on them, cease to apply in so far as they concern judgments, compromises, formal demands of payment and summonses before the Supreme Court.

158. When an object seized remains in the debtor's possession, the person who makes the seizure loses his right arising from the seizure as against the debtor's creditors in the case of bankruptcy or a subsequent seizure, when he does not within twelve weeks of the close of the seizure bring about a compulsory auction, or by means of a repetition of the execution at the hands of the King's bailiff does not succeed in getting the object seized out of the debtor's possession, unless he has been prevented from doing so owing to an appeal or the rights of third persons.

159. In regard to liens and similar rights against ships, the specially enacted provisions of the Maritime Law generally apply.

<sup>1)</sup> Royal Ordinance of 19 July 1872.

## Tredie Afsnit. Nogle Forandringer i de gjældende Bestemmelser om Exekution og Arrest paa Person.

### Kapitel XVIII.

**160.** Udlæg kan ikke gjøres i de for Skyldneren og hans med ham samlevende Hustru og Børn fornødne Senge og Sengklæder samt nødvendigste Linned og Gangklæder.

Endvidere kan Skyldneren fordre, at der skal levnes ham Gjenstande, som høre til de vigtigste Livsfornødenheder eller ere nødvendige til hans Næringsvejs Udøvelse, indtil et Vurderingsbeløb af 10 Rd.<sup>1)</sup> eller, dersom han er Familieforsorger, af 30 Rd.<sup>2)</sup>. Disse Gjenstande er han selv berettiget til at undtage fra Udlæget efter eget Valg; har han ikke været tilstede under Exekutionsforretningen, bør der gives dem, der ellers ere tilstede i hans Hus, Anledning til paa hans Vegne at foretage et saadant Valg. Denne Ret til at undtage Gjenstande indtil en vis Værdi fra Udlæget indtræder dog ikke, naar Udlæg gjøres for Skatter eller andre Afgifter til det Offentlige, og kommer heller ikke til Anvendelse med Hensyn til Gjenstande, som ere særligen givne til Pant for den Fordring, i Anledning af hvilken Udlæg søges.

**161.** Udlæg kan ikke gjøres i det, som Skyldneren maatte kunne erhverve ifølge gjensidig bebyrdende Kontrakt, der ikke endnu er fuldstændig opfyldt fra hans Side, naar det, der af ham skal ydes, er personligt Arbejde eller Tjeneste eller Andet, som Udlægshaveren ikke er eller ved Udlægsforretningen sættes istand til at give eller udføre.

Dog skal ovenstaaende Forskrift ikke medføre nogen Indskrænkning i den hidtil bestaaende Adgang til for Underholdningsbidrag til Børn, forladte og fraseparerede Hustruer at holde sig til Skyldnerens Arbeids- eller Tjenesteløn eller lignende Indtægt.

**162.** Gjælds fængsel efter Dom, offentligt Forlig eller andet lovgyldigt Exekutionsgrundlag kan for Fremtiden ikke paalægges Nogen undtagen i det Tilfælde, som omhandles i Forordning af 6te April 1842 § 4, jfr. Forordning af 17de Februar 1847 § 6.

Bestemmelserne om de særegne Tyvangsmidler, som kunne anvendes for Underholdningsbidrag til Børn, forladte og fraseparerede Hustruer, vedblive at gjælde.

**163.** Arrest paa Person, førend Exekution efter Dom, offentligt Forlig eller andet lovgyldigt Exekutionsgrundlag kan foretages, kan ikke paalægges Nogen, undtagen hvor det handles om en Forpligtelse til at foretage en Handling, og hvor derfor ifølge den foregaaende Paragraf Gjælds fængsel endnu vil kunne anvendes efter Dommen.

**164.** (Som ændret ved Lov Nr. 160 af 18 December 1897.)

Dog kan der under lagttagelse af de hidtil gjældende Regler herom anvendes Arrest, før Exekution kan finde Sted, paa Personer, der staa i Begreb med at forlade Landet for bestandigt eller paa ubestemt Tid, i Anledning af Fordringer, for hvilke de uden Hensyn til Arrestværnethingsbestemmelserne ifølge Lovgivningens almindelige Regler vilde kunne sagsøges ved danske Retter.

Fogedforretningen kan i de nævnte Tilfælde, hvor Saadant til Oiemedets Opnaaelse maa anses fornødent, begynde paa det Sted, hvor Personen antræffes.

**165.** (Som ændret ved Lov Nr. 38 af 28 Februar 1908.) Med Arrest paa Person, der i Henhold til den foregaaende Paragraf er paalagt Nogen, bliver der at forholde efter de hidtil gjældende Regler, derunder ogsaa Forordning af 17de Februar 1847. Dog skal saadan Arrest i alle Tilfælde bortfalde, saasnart der efter en i Forfølgningssagen erhvervet Dom, der ikke paaankes, eller et forud for eller under samme indgaaet offentligt Forlig kan gjøres Exekution for Fordringen, saavelsom saasnart Skyldnerens Bo tages under Konkursbehandling. Dette sidste gælder, hvad enten Konkursen erklæres her i Landet eller i et Land, med hvilket der i saa Henseende er truffet Overenskomst.

<sup>1)</sup> = 20 Kroner. — <sup>2)</sup> = 60 Kroner.

### Third Section. Modifications in the regulations now in force with regard to execution against property and the arrest of persons.

#### Chapter XVIII.

**160.** Beds and bedding and the most necessary linen and clothing belonging to the debtor and his wife and children cohabiting with him are not subject to seizure.

Furthermore, the debtor is entitled to demand that objects belonging to the most important necessities of life, or being necessary for the exercise of his trade, shall be left to him, up to an estimated amount of 10 Rd<sup>1</sup>), or, if he has a family to support, up to 30 Rd<sup>2</sup>). He is himself entitled to except such objects from the seizure according to his own choice. If he is not himself present when the seizure takes place, the persons present in his house at the time ought to be given the opportunity of making such a choice on his behalf. This right, however, to except objects from the seizure up to a certain amount does not apply when the seizure is effected for taxes or other public dues, nor does it apply to such objects as have been specially given as pledges for the claim by reason of which the seizure is effected.

**161.** That which the debtor may be able to acquire owing to a reciprocally binding contract which on his part has not yet been entirely fulfilled is not subject to seizure, if that which he is bound to perform is personal work or service or anything else which the person who makes the seizure is not owing to the seizure in a position to give or perform.

This rule, however, must not bring about any limitation of the right obtaining heretofore, to look to the debtor's wages or salary or similar income for alimentary allowances for his children, or his abandoned or separated wife.

**162.** Imprisonment for debt in pursuance of a judgment, public compromise or other valid basis of execution, shall in future not be inflicted on any person except in the case which is dealt with in the Ordinance of 6 April 1842, § 4; see the Ordinance of 17 February 1847, § 6.

The rules bearing on the means of compulsion applicable to alimentary allowances for children, and abandoned and separated wives, continue to apply.

**163.** An arrest of the person, before an execution has been effected in pursuance of a judgment, public compromise or other legal basis of execution, must not be inflicted on any person, except where there is a question of a liability to perform an act, and where, consequently, according to the preceding Article, imprisonment for debt may still be applied after judgment has been pronounced.

**164.** (As modified by Act No. 160 of 18 December 1897.)

When, however, the rules obtaining heretofore with regard to this matter are observed, an arrest may be made before execution can be effected of persons who at the time intend to leave the country permanently or for an indefinite space of time, in respect of claims for which they may be sued before Danish tribunals according to the ordinary rules of the law without having regard to the regulations bearing on the competent jurisdiction in the case of arrest.

The arrest effected by the King's bailiff may in the cases mentioned, where it is considered necessary for the purpose, be carried out at the place where the person concerned is found.

**165.** (As modified by Act No. 38 of 28 February 1908.)

The rules obtaining heretofore will continue to apply, including also the Ordinance of 17 February 1847, with regard to arrest of the person, in the case of the arrest of any person in pursuance of the preceding article. Such arrest, however, will be inapplicable in all cases where, in pursuance of a judgment obtained in the action, which is not appealed against, or in pursuance of a compromise arrived at before or during the action, an execution may be effected, and also where the estate of the debtor is submitted to bankruptcy proceedings. The latter rule applies whether the bankruptcy in question is declared in this country or in a country with which a treaty bearing on this matter has been concluded.

<sup>1</sup>) 20 kroner. — <sup>2</sup>) 60 kroner.

166. Under Arrest- og Exekutionsforretninger er Føgden paa Rekvirentens Begjæring berettiget til at gennemsoge Skyldnerens Værelser og Gjemmer saavel som at anstille Undersøgelser paa Skyldnerens Person, naar denne formodes at have skjult Penge, Obligationer eller andre Værdigjenstande paa sig.

167. Skyldneren er pligtig under Arrest- og Exekutionsforretninger paa Forlangende at opgive redeligen og overensstemmende med Sandheden, hvad han eier til Sikkerhed for eller Fyldestgjørelse af Fordringen, samt iøvrigt at meddele alle i saa Henseende fornødne Oplysninger. Er Skyldneren ikke tilstede, kan Rekvirenten udsætte Forretningen og med et af Føgden bestemt Varsel lade ham tilsige til Møde, der af Rekvirenten kan forlanges afholdt paa Føgdens Kontor.

Vægrer Skyldneren sig ved at fremkomme med Opgivelser og Oplysninger, eller undlader han uden lovligt Forfald at møde ved Forretningens Fortsættelse, kan Rekvirenten forlange ham hensat i simpelt Fængsel, indtil han opfylder sin Pligt i saa Henseende, dog ikke udover 6 Maaneder.

Omkostningerne ved Fængslingen afholdes paa samme Maade som Delinkvent-omkostningerne.

168. Naar Skyldneren under en Exekutionsforretning eller paa en Tid, da han maatte forudse en saadan, i egenlystigt Hensigt for at unddrage sin Kreditor den ham tilkommende Fyldestgjørelse foretager Noget, der gaar ud paa, at hans lovlige Eiendele eller Fordringer skulle unddrages fra at udlægges til paagjældende Kreditor, bliver han at anse med Straf efter Straffelovens § 260.

169. Enhver, der forinden denne Lovs Træden i Kraft er belagt med Arrest paa Person, kan fordre sig sat i Frihed, forsaavidt og saasnart han ifølge denne Lovs Bestemmelse ikke vilde kunne holdes i Gjældsængsel.

## Kapitel XIX. Om Lovens Omraade og Træden i Kraft.

170. Denne Lov træder i Kraft 6 Maaneder fra den Dag at regne, da det Nummer af Lovtidenden udgaar, hvori den kundgjøres.

Regjeringen bemyndiges til ved kongelig Anordning at sætte denne Lov i Kraft paa Færøerne med de Lempelser, som ifølge disse Oers særegne Forhold maatte findes hensigtsmæssige.

Hvorefter alle Vedkommende sig have at rette.

## Tvangsakkord udenfor Konkurstilfælde.

Efterstaaende Lov, der er traadt i Kraft den 1 Oktober 1906, adskiller sig fra andre Love af lignende Art navnlig dels derved, at der forud for Skyldnerens Henvendelse til Skifteretten om dennes Medvirken til Akkordens Istandbringen skal være gaaet en udenretslig forberedende Virksomhed fra Skyldnerens Side under Medvirken af offentlig beskikkede Tillidsmænd, med det Øjemed at simplificere Behandlingen for Skifteretten og gøre Opnaaelsen af Akkord sandsynlig, dels derved, at Paabegyndelsen af Akkordforhandling for Skifteretten kun standser Singularforfølgning fra Kreditorernes Side, men ikke sikrer Debitor mod at blive erklæret konkurs (jvf. nærmere § 5).

## Lov af 14 April 1905 om Tvangsakkord udenfor Konkurs og om Udvidelse af Adgangen til Tvangsakkord under Konkurs.

Art. 1. En Skyldner, der ønsker at opnaa Tvangsakkord udenfor Konkurs, maa til Skifteretten indgive Andragende, ledsaget af: 1. Opgørelse af Skyldnerens Status tillige med hans paa Ære og Samvittighed afgivne Erklæring om, at han redeligt har opgivet alt, hvad han ejer og skylder; — 2. Fortegnelse over alt, hvad Skyldneren ejer, med tilføjet detailleret Vurdering, foretagen af den i Nr. 6 omtalte

**166.** When arrests and seizures are being carried out, the bailiff, at the request of the person who makes the seizure, is authorised to search the debtor's apartments and storerooms, as well as to search the debtor's person when he is supposed to have money, securities or other objects of value concealed about him.

**167.** When arrests and seizures are being effected, the debtor, on request, is bound to state, honestly and according to facts, what he owns as security for or payment of the claim in question, and also to give all necessary information in regard to this point. If the debtor is not present, the execution creditor may postpone the proceeding and, subject to a period of delay which is fixed by the bailiff, may summon the debtor to a meeting, which, at the request of the creditor, may be held at the office of the bailiff.

If the debtor refuses to make a statement and give information, or without valid reason neglects to appear when the matter is proceeded with, the creditor is entitled to demand that he shall be subjected to simple imprisonment until he has fulfilled his duty in this respect, for not longer, however, than six months.

The expenses of the imprisonment are defrayed in the same manner as the expenses of ordinary criminals.

**168.** When the debtor, whilst an execution is being proceeded with, or at a time when he was bound to foresee the execution, with the object in view of withholding from his creditor the payment or satisfaction which is due to him, does anything to prevent the seizure by the creditor in question of the objects or claims which belong to him according to law, he shall be liable to punishment according to § 260 of the Penal Code.

**169.** Any person who, before this Act comes into force, has been subjected to arrest of his person, is entitled to claim his liberty in so far and as soon as, according to the provisions of this Act, he will not be subject to imprisonment for debt.

## **Chapter XIX. The territory to which this Act applies and the date of its coming into force.**

**170.** This Act comes into force in six months reckoned from the day on which the number of the Legal Gazette in which it is published is issued.

The Government is authorised by means of a Royal Ordinance to carry this Act into force in the Farøe Islands, subject to the modifications which, owing to the peculiar conditions of these Islands, may be expedient.

All persons concerned shall comply with the provisions of this Act.

## **Composition in cases not relating to bankruptcy.**

The following Act, which came into force on 1 October 1906, differs from other laws of a similar nature, notably in part owing to the fact that, before the debtor's application is presented to the Bankruptcy Court with a view to asking this Court to co-operate in order to bring about a composition, non-judicial and preparatory negotiations, having in view the simplification of the proceedings of the Bankruptcy Court and to make it probable that a scheme of composition will be accepted, will have been carried on by the debtor, with the assistance of officially authorised men who enjoy general confidence, in part owing to the fact that the commencement of the composition proceedings before the Bankruptcy Court only suspends the individual actions of the creditors, but does not assure the debtor against being declared bankrupt (see for further particulars § 5).

## **Act of 14 April 1905 on compositions in cases not relating to bankruptcy and the extension of the right to obtain a composition during bankruptcy proceedings.**

**Art. 1.** A debtor desiring to obtain a composition in cases not relating to bankruptcy, must present to the Bankruptcy Court an application accompanied by: 1. A statement of his assets and debts, together with a declaration given on his honour and conscience to the effect that he has honestly stated everything which he owns and owes; — 2. A list of all that which the debtor owns, supplemented by a detailed

sagkyndige Tillidsmand. Vurderingen skal til Sammenligning saa vidt muligt indeholde specificeret Oplysning om den Værdi, som Skyldneren ved tidligere Vurdering af sine Ejendele, navnlig ved den sidst foretagne Statusopgørelse, hvis nogen saadan maatte foreligge, har sat paa hver af disse, og ellers om Indkøbsprisen; — 3. Liste over hans Fordringshavere med specificeret Angivelse af hver enkelt Navn, Opholdssted og Tilgodehavende saavel som af den Sikkerhed, som maatte være stillet. Fordringer, som Skyldneren bestrider, opfores med Bemærkning herom. Tillige skal, saa vidt muligt, være tilvejebragt og vedlægges Fordringshavernes Erklæringer over Størrelsen og Beskaffenheden af deres Krav; hvis Erklæring fra nogen Fordringshaver mangler, skal det oplyses, om han er bleven opfordret til at melde sit Krav; — 4. Fortegnelse over de Bøger, som maatte være forte over Skyldnerens Forretninger; — 5. Skyldnerens Akkordforslag med skriftlig Erklæring fra mindst to Femtedele af de kendte Fordringshavere efter Tal og Vægt om, at de stemme for Forslaget; — 6. Erklæring fra to af Skyldneren tilkaldte, offentlig autoriserede Tillidsmænd (§ 2), af hvilke den ene skal være autoriseret som sagkyndig i den Art af økonomisk Virksomhed, som Skyldneren driver, og den anden autoriseret som regnskabskyndig, og som ikke maa være Skyldneren saa nær beslegtede som Sødskendeborn og ej heller saa nær besvogrede. Den ene af disse Tillidsmænd skal for Provinskøbstædernes saavel som for Frederiksbergs, Frederiksværks, Marstals og de Landsbyers Vedkommende, der have over 2,000 Indbyggere, være bosat udenfor den Købstad, Handelsplads eller Landsby, hvor Skyldneren bor. Erklæringen skal indeholde Tillidsmændenes Udtalelse om, at de nøje have gennemgaaet Skyldnerens hele Bo og Regnskabsvæsen samt Forretningsførelse, at den opgjorte Status og de øvrige forannævnte Oplysninger om Boet efter alt, hvad der har foreligget dem, ere saa fuldstændige, som det har været muligt at skaffe dem, samt at der med deres Vidende intet urigtigt findes deri. Erklæringen skal fremdeles indeholde udtømmende Oversigt over Boets Stilling, Fremstilling af Skyldnerens Forretningsførelse før og efter Mændenes Tilkaldelse og af Bogføringens Beskaffenhed, Redegørelse for de Omstændigheder, der have bevirket, at Skyldneren er bleven sat ud af Stand til at fyldestgøre sine Gældsforpligtelser, og for, hvorledes Underskudet er fremkommet, samt Oplysninger til Bedømmelse af, om Skyldnerens Forhold har været forsvarligt eller maa betegnes som letsindigt eller uordentligt. Særlig skal omtales, om Skyldneren skønnes at have indgaaet Retshandler, der kunne afkræftes i Tilfælde af Konkurs, om Skyldneren er eller i den senere Tid har været under Retsforfølgning eller har indgaaet Forlig for nogen Ret eller Forligskommission, om der foreligger Omstændigheder, som kunne give Anledning til Undersøgelse eller Forfølgning fra det offentlige Side, saavel som hvad Mændene iøvrigt maatte have fundet at bemærke til Sagens Oplysning. Endelig skulle Tillidsmændene udtale sig om Antageligheden af Skyldnerens Akkordforslag, om den Betyggelse, der haves for, at Akkorden vil blive opfyldt fra Skyldnerens Side, samt om, hvorledes Boets Stilling kan antages at ville blive i Tilfælde af Konkurs; — 7. Et Beløb af 20—100 Kr. efter Skifteforvalterens Skøn som Forskud paa de med Andragendets Behandling og Akkordforhandlingen forbundne Omkostninger. Den Skyldner eller Tillidsmand, der ved Afgivelsen af de i denne Paragraf omhandlede Erklæringer giver bevidst urigtige Oplysninger eller gør sig skyldig i grov Skodesløshed, straffes med Boder eller simpelt Fængsel, for saa vidt ikke højere Straf efter den øvrige Lovgivning maatte være forskyldt.

2. Justitsministeren autoriserer for et af ham hestemt Tidsrum indenfor de forskellige Erhvervsgrene, efter derom saa vidt muligt at have indhentet Udtalelser fra dertil egnede Foreninger af næringsdrivende, Landbrugere eller andre, Mænd der som sagkyndige kunne tilkaldes af Skyldnere som Tillidsmænds ved Akkordforhandling efter denne Lov. I samme Ojemed autoriserer Justitsministeren regnskabskyndige Tillidsmænd.

Handelsforeninger, der mindst have saadant Omraade som i § 1 Litra 6 omtalt, kunne hvert Aar inden 1. Maj indstille til Justitsministeriet en Fortegnelse over

estimate made by the competent expert mentioned in No. 6. This estimate, with a view to making a comparison, shall as far as possible contain detailed information as to the value at which the debtor, in the case of previous valuations of his property, particularly when the last balance-sheet was drawn up, in case such balance-sheet is available, has estimated each of his belongings, and furthermore as to the price he paid for them; — 3. A list of his creditors with the particulars of the names of each of them, their places of residence, the amounts of their claims and the securities which may be available. Those claims which the debtor disputes are put on the list with remarks to this effect. Furthermore, declarations of the creditors regarding the extent and nature of their claims, shall, as far as possible, be available and enclosed; if such a declaration in the case of any creditor is not available, information shall be given as to whether he has been asked to give notice of his claim; — 4. A list of the books which may have been kept in regard to the debtor's business; — 5. The debtor's proposal of composition, with a written declaration from at least two fifths of the known creditors, both according to their number and the amounts of their claims, as to whether they are in favour of such proposal; — 6. A declaration from two officially authorised impartial men (§ 2), chosen for this purpose by the debtor, of whom one shall be an authorised expert in the particular kind of trade in which the debtor is engaged, and the other an authorised accountant, and who must not be relatives of the debtor in so near a degree as his cousins, nor so nearly related by way of marriage. One of these impartial men, in the case of the provincial towns, as well as of Frederiksborg, Frederiksværk, Marstal, and of those villages the number of inhabitants of which exceeds 2000, shall reside outside the town, trading place or village where the debtor has his domicile. The declaration shall contain the opinion of the impartial men to the effect that they have carefully examined all the assets and debts of the estate, the accounts of the debtor, and the manner in which he has conducted his business, that the balance-sheet drawn up and the other information concerning the estate previously mentioned, are as complete as it has been possible to procure them, in so far as they have been able to ascertain, and that there is nothing incorrect in them to their knowledge. The declaration shall furthermore contain an exhaustive account of the position of the estate, an exposition of the manner in which the debtor has conducted his business before and after the date on which the two men were called upon to examine it, a description of the manner in which the accounts have been kept, an account of the circumstances which have brought about the situation of the debtor being unable to pay his debts, and as to the way in which the deficit has arisen, and information tending to elucidate whether the debtor's conduct has been regular, or whether it must be considered as thoughtless or irregular. In particular shall be mentioned whether it is considered that the debtor has concluded transactions likely to be annulled in the case of bankruptcy, whether the debtor is being or of late has been prosecuted or has concluded a compromise before any tribunal or conciliation committee, whether circumstances exist which may bring about a trial or prosecution on the part of the public prosecutor, and also what the two men in other respects may have to say with a view to elucidating the debtor's affairs. Finally the two impartial men have to give their opinion as to whether the debtor's proposed composition ought to be accepted, as to the guarantee available regarding the probability of the debtor carrying out the proposed composition, and as to the probable position of the debtor's estate in the case of bankruptcy being declared; — 7. According to the estimate of the judge of the Bankruptcy Court, an amount of 20—100 kroner as an advance towards the expenses arising from the examination of the application and the composition proceedings. The debtor or the impartial expert who, in the declarations mentioned in this Article, consciously gives inexact information or is guilty of carelessness, is liable to a fine or simple imprisonment, whenever no severer punishment has been incurred in accordance with other legal provisions.

2. The Minister of Justice, after having obtained, as far as possible, the opinions of competent associations of traders, agriculturists and others, appoints men within the various branches of trade and business for a period fixed by him, who as authorised experts may be called upon by debtors as impartial men when a composition is suggested in accordance with this Act. With the same object in view, the Minister of Justice authorises impartial accountants.

Trading associations carrying on business in the districts mentioned in Number 6 of § 1, in every year before 1 May submit to the Ministry of Justice a list of such

saadanne indenfor deres Omraade bosatte Personer, som de anse for særlig skikkede til at autoriseres. — Landboforeninger, der mindst have flere Sognes Omraade, tilkommer der paa deres Omraade samme Indstillingsret.

Landbrugskyndige Tillidsmænd autoriseres kun for det Amt, hvori de bo. For andre sagkyndige Tillidsmænd og for regnskabskyndige Tillidsmænd hjemler Autorisationen deres Benyttelse over hele Riget.

Skifteretten kan ifølge en Skyldners Henvendelse meddele andre Autorisation som Tillidsmænd for den enkelte Sag.

Naar Tillidsmænd tilkaldes af en Skyldner, kunne de forlange et passende Beløb deponeret til Sikkerhed for den dem tilkommende Betaling. Om fornødent fastsættes dettes Størrelse og Deponeringsmaaden af Skifteretten.

3. Skyldnerens i § 1 ommeldte Andragende forsynes af Skifteretten med Paategning om Dagen og Klokkeslettet, da det er indleveret.

Retten har derefter inden 3 Dage eller, om dette ikke kan ske, snarest muligt derefter ved Kendelse at afgøre, om Akkordforhandling skal aabnes. Der skal, for Afgørelsen træffes, afholdes et Mode, hvortil Fordringshaverne have Adgang, og i hvilket Skyldneren og om fornødent Tillidsmændene skulle være til Stede og besvare de af Retten eller andre stillede Spørgsmaal.

Efter Omstændighederne kan Retten derhos forlange Sikkerhed stillet for de med Akkordforhandlingen forbundne Omkostninger, der ikke dækkes ved det i § 1 omhandlede Forskud.

Hvis Andragendet ikke tilfredsstiller Forskrifterne i § 1, og Manglerne ikke betimelig afhjælpes, eller hvis Retten efter de fremkomne Oplysninger finder det klart, at Forhandling om Akkord ifølge § 4 ikke kan finde Sted, eller at Forskrifterne i § 25 ville være til Hinder for, at en Akkord vil kunne erholde Rettens Stadfæstelse, skal Andragendet afslaaes. I saa Fald skal Underretning om Afslaget og Grundene derfor uopholdelig efter Ankefristens Udlob (§ 36) meddeles de kendte Fordringshavere.

Skifteretten skal ogsaa senere standse en begyndt Akkordforhandling, saa snart den kommer til Kundskab om et Forhold, som vil være til Hinder for Akkordforhandlingens Fortsættelse eller Akkordens Stadfæstelse.

4. Forhandling om Akkord efter denne Lov kan ikke finde Sted og skal, hvis den er aabnet, bortfalde: a) naar Skyldneren tilforn har været under Konkurs eller har faaet Tvangsakkord efter denne Lov, medmindre han beviser at have betalt Fordringshaverne under eller efter Konkursen eller Akkorden i det mindste 75pCt. af deres Fordrings Beløb, som dette med paaløbne Renter var henholdsvis for Konkursen og for Akkordforhandlingens Begyndelse; — b) naar Skyldneren ikke forbliver til Stede under Sagens Behandling, medmindre hans Bortrejse sker med Skifterettens Tilladelse; — c) naar Skyldneren undlader at give de Oplysninger, som Skifteretten finder fornødne, eller i andre Maader undlader at efterkomme, hvad denne Lov paalægger ham; — d) naar det har vist sig umuligt under Boets Gennemgaaelse at erlærve paalidelig Oversigt over dets Stilling; — e) naar Skifteretten i Henhold til Tillidsmændenes Undersøgelse eller i øvrigt finder, at Skyldnerens Forhold maa karakteriseres som uredeligt eller dog som letsindigt eller uordentligt.

5. Akkordforhandlingen anses, for saa vidt Skifteretten eller i Tilfælde af Appel den i § 35 nævnte Akkordret tager Beslutning om, at saadan Forhandling kan finde Sted, for aabnet fra det Øjeblik, da Skyldnerens Andragende om Akkordforhandling er indleveret til Skifteretten.

Fra den Tid, da Akkordforhandlingen anses for begyndt, indtil den ophører, kan Arrest, Udleg, Udpantning eller Afsætning ikke retsgyldig ske i Skyldnerens Gods undtagen for Fordringer, som ikke berøres af Akkorden.

Derimod kan i dette Tidsrum, saa længe Akkorden ikke er vedtaget, enhver Fordringshaver, hvis Fordring ikke er sikret ved tilstrækkeligt Pant, hvad enten hans Fordring er forfalden eller ej, forlange Skyldnerens Bo taget under Konkursbehandling. Saadan Forlangende tages dog, naar det fremsættes af Fordringshavere, som berøres af Akkorden, ikke til Følge, medmindre det er — eller før



persons domiciled within their district as they consider particularly suitable for this kind of authorisation. Agricultural associations comprising the districts of several parishes have the same right of suggesting suitable men for such authorisation within their branch of industry.

Experts in agriculture are only authorised within the county where they have their domicile. As regards other impartial experts and experts in accountancy, their authorisation applies to the whole Kingdom.

At the request of the debtor, the Bankruptcy Court may also authorise other persons to serve as impartial men in special cases.

When such impartial men are called upon by a debtor to serve as experts, they are entitled to demand a suitable deposit as a guarantee for the fee which will be due to them. If necessary the Bankruptcy Court decides as to the amount and mode of such deposit.

3. The Court of Bankruptcy appends a note to the debtor's application mentioned in § 1, mentioning the day and the hour of its delivery.

Thereupon the Court, within three days, or, if this period is too short, as soon as possible, has to decide whether composition proceedings shall be commenced. Before the decision is given, a meeting shall be held, to which the creditors shall be admitted, and in which the debtor, and if necessary the impartial experts, shall be present in order to answer questions asked by the Court or other persons.

The Court is, furthermore, entitled, according to circumstances, to demand security for such expenses arising from the composition proceedings as are not covered by the money advanced according to § 1.

If the application is not in conformity with the regulations of § 1, and the omissions are not rectified in time, or if the Court, having regard to the available information, considers it obvious that the composition proceedings cannot take place according to § 4, or that the provisions of § 25 are obstacles to a composition being confirmed by the Court, the application shall be rejected. In such case, immediately after the expiration of the period for appeal (§ 36), information as to, and the reasons for, the rejection shall be sent to the ascertained creditors.

The Court of Bankruptcy is also authorised at a later stage of the proceedings to close composition proceedings which have been commenced as soon as it acquires knowledge of any circumstance preventing the continuation of the proceedings or the confirmation of the composition suggested.

4. Composition proceedings according to this Act cannot take place, and shall, if commenced, be closed: a) when the debtor has previously been bankrupt or obtained a composition according to this Act, unless he proves that he has paid the creditors, during or after the bankruptcy or composition in question, at least 75 per cent. of the amount of their claims, such amount to be reckoned as it stood with interest due before the bankruptcy and before the commencement of the composition proceedings respectively; — b) when the debtor does not remain on the spot while his cause is being dealt with, unless the Court of Bankruptcy has given him permission to be absent; — c) when the debtor omits to give the information which the Court of Bankruptcy considers necessary, or in other ways omits to comply with the provisions of this Act; — d) when, during the examination of the assets and debts of the estate, it has proved impossible to obtain a reliable account of its position; — e) when the Court of Bankruptcy, on the basis of the declaration of the impartial experts, or in some other manner, comes to the conclusion that the debtor's conduct must be considered dishonest or at least thoughtless or irregular.

5. The composition proceedings, provided the Court of Bankruptcy, or, in the case of appeal, the Court of Appeal mentioned in § 35, decides that such proceedings may take place, are considered as commenced from the moment at which the debtor's application suggesting composition is delivered to the Court of Bankruptcy.

From the time at which the composition proceedings are considered as commenced, until they are closed, no arrest, seizure, taking pledge, or seizure by way of security of the debtor's property can legally be carried out, except for claims which are not affected by the composition in question.

On the other hand, during this period, so long as the composition proposed has not been accepted, every creditor whose claim is not guaranteed by a sufficient pledge, whether his claim is due for payment or not, may demand that the debtor's estate be submitted to bankruptcy proceedings. Such demand, however, is not complied with when it has been made by creditors who are affected by the composition, unless it has been —

det bliver — tiltraadt af mindst to andre lignende Fordringshavere, hvis Fordringer ikke ere overdragne dem efter Akkordforhandlingens Aabning. De konkursbegærende Fordringshaveres Krav skulle derhos tilsammen udgøre mindst  $\frac{1}{10}$  af det samlede Beløb af bekendte Fordringer paa det Tidspunkt, da Forlangendet fremsættes.

I Tidsrummet mellem Akkordens Vedtagelse og Rettens endelige Afgørelse om dens Stadfæstelse kan Skyldnerens Bo ikke tages under Konkursbehandling efter Begæring af nogen Fordringshaver, som berøres af Akkorden. Dersom nogen af de i Konkurslovens Kapitel 4 nævnte Frister vilde udløbe i det Tidsrum, da Adgangen til at faa Skyldneren erklæret fallit saaledes er stanset, eller vilde udløbe inden en Uge derefter, skal Fristen dog ikke regnes som udløben, dersom Skyldneren kommer under Konkurs i Lobet af en Uge efter det nævnte Tidsrums Ophør.

6. Tages Skyldnerens Andragende om Aabning af Akkordforhandling til Følge, paahviler det Skifteretten: 1. Uden Ophold at udfærdige en Bekendtgørelse om Akkordforhandlingens Aabning samt i Forbindelse dermed beramme et Møde til Behandling af og Afstemning om Skyldnerens Akkordforslag, hvilket Møde skal afholdes ikke under 14 Dage og ikke over 4 Uger efter Rettens Kendelse om Akkordforhandlingens Aabning. Samtidig opfordres Fordringshaverne til for Skifteretten at anmelde deres Tilgodehavende hos Skyldneren. Bekendtgørelsen, som i nogenlunde betydelige Boer bør gentages nogle Gange, indrykkes i Statstidende, paa Færøerne tillige i Dimmalætting; — 2. Inden en Uge efter Rettens Kendelse om Akkordforhandlingens Aabning ved anbefalet Brev at tilstille samtlige kendte, saa vel udenrigs som indenrigs, Fordringshavere eller deres bekendte Repræsentanter paa Stedet Genpart af den under Nr. 1 nævnte Bekendtgørelse, Skyldnerens Akkordforslag, Statusopgørelsen og Tillidsmændenes Erklæring. Hvis nogen Fordring helt eller delvis af Skyldneren eller nogen Fordringshaver bestrides eller forlanges nærmere bevisliggjort, skal dette samtidig meddeles Fordringshaveren. Fordringshavere, om hvilke Skifteretten først senere faar Kundskab tilstilles der uden Ophold lignende Meddelelse. Fjærtntboende Fordringshavere kan Skifteretten efter sit Skøn sende en kort telegrafisk Indkaldelse til Mødet.

Der kan dog ikke paa Undladelse af det i Nr. 2 foreskrevne bygges nogen Indsigelse mod Akkordforhandlingen.

Skyldnerens Andragende med Bilag henlægges til Eftersyn for alle vedkommende i Retten, og enhver Fordringshaver kan forlange Afskrift deraf mod Betaling.

7. I det til Akkordforslagets Behandling bestemte Møde skal Skyldneren være til Stede. Kun Sygdom eller anden efter Rettens Skøn uovervindelig Hindring fritager herfor. Ligeledes skulle Tillidsmændene være til Stede, naar de ikke have lovligt Forfald. I Smaaboer kan Skifteretten bestemme, at Tillidsmændene ikke behøve at være til Stede i Mødet. Skyldnerens Akkordforslag fremsættes, og der gøres Rede for Boets Forhold indtil Mødets Dato. Til Brug ved Afstemningen fremlægges og gennemgaaes i Mødet Listen over Fordringshaverne, hvilken skal indeholde samtlige anmeldte og ikke anmeldte Fordringer og være forsynet med Bemærkning om, hvor vidt Fordringerne bestrides af Skyldneren eller fra anden Side.

Hvis nogen formener sig urettelig forbigaaet ved Fortegnelsens Udfærdigelse, eller hvis en Fordring formenes opført med urigtigt Beløb, gøres herom ligeledes Anmærkning paa Fortegnelsen.

Dersom Skyldneren gør Forandring i eller Tillæg til sit Akkordforslag, afgør Skifteretten, efter at have givet de tilstedeværende Lejlighed til at udtale sig, om Afstemning over det ændrede Forslag kan ske i Mødet. Skønner Retten, at nyt Møde bør finde Sted, berammer den saadant med kort Varsel, i Reglen ikke over en Uge. Det nye Møde indvarsles ved Bekendtgørelse i Statstidende, paa Færøerne tillige i Dimmalætting, og der skal desuden (§ 6) sendes særskilt Meddelelse i anbefalet Brev til de kendte Fordringshavere, som ikke ved deres Tilstedeværelse i

or until it has been — adhered to by at least two other similar creditors whose claims have not been transferred to them since the commencement of the composition proceedings. The claims of those creditors who demand bankruptcy must furthermore amount together to at least one tenth of the total amount of the claims known at the time when the demand is made.

During the period running between the acceptance of the proposed composition and the final decision of the Court as to its confirmation of such composition, the estate of the debtor cannot be submitted to bankruptcy proceedings at the request of any creditor affected by the suggested composition. If any of the periods mentioned in Chapter 4 of the Bankruptcy Act would expire within the period during which the right of declaring the debtor bankrupt has consequently been suspended, or would expire within a week after the end of this period, the period shall not, however, be counted as expired if the debtor becomes bankrupt in the course of a week after the expiration thereof.

6. If the debtor's application regarding the commencement of the composition proceedings is accepted, it is incumbent on the Court of Bankruptcy: 1. Forthwith to publish a proclamation of the commencement of the composition proceedings, and in connection with this to convene a meeting which is to discuss and vote on the debtor's proposed composition, which shall be held at least fourteen days and at the most four weeks after the decision of the Court regarding the commencement of the composition proceedings. At the same time the creditors are requested to give notice of their claims on the debtor to the Bankruptcy Court. The proclamation, which in the case of estates of some importance ought to be repeated several times, is published in the State Gazette, in the Farøe Islands also in the *Dimmalaetting*; — 2. Within a week after the decision of the Court with regard to the commencement of the composition proceedings, to send by means of registered letters to all the known creditors, as well to those living in the kingdom as abroad, or to their known representatives living at the place in question, a copy of the proclamation mentioned under No. 1, the debtor's proposed composition, the balance-sheet and the declaration of the impartial experts. If any claim, either wholly or in part, is contested by the debtor or any creditor, or if it is demanded that such claim shall be further elucidated, the creditor in question shall at the same time be informed of this circumstance. Those creditors whose claims do not become known to the Bankruptcy Court until later, are forthwith informed in similar manner. The Bankruptcy Court, if it considers it opportune to do so, may convene creditors living at a great distance to the meeting by means of a brief telegram.

No objection against the composition proceedings can, however, be based on the omission of that which is prescribed according to No. 2.

The debtor's application, with the supplements, remains for examination by all the interested persons at the office of the Court, and every creditor is entitled to a copy of the application upon payment of the charge.

7. The debtor shall be present at the meeting convened for the discussion of the proposed composition. Only illness or other obstacles which according to the opinion of the Court are unsurmountable, exempt him from this duty. The impartial experts shall also be present, when they have no valid leave of absence. In small towns the Court of Bankruptcy may decide that the impartial experts need not be present at the meeting. The debtor's proposed composition is placed before the meeting, and an account is given of the assets and debts of the estate up to the date of the meeting. The list of the creditors, to be used when voting takes place, is submitted to and examined by the meeting; this list shall contain all the claims, recorded and non-recorded, and be provided with observations as to whether the claims are contested by the debtor or by other persons.

If any one is of opinion that he has not been duly considered when the list was drawn up, or if the opinion prevails that the amount of a claim has been incorrectly stated, this is also recorded in the list.

If the debtor alters or supplements his proposal of composition, the Court of Bankruptcy, after having given the creditors present the opportunity of giving their opinion on the matter, decides whether voting on the altered proposal shall take place at the meeting. If the Court comes to the conclusion that another meeting ought to take place, such meeting is convened with a short notice, which as a rule does not exceed a week. The new meeting is convened by means of a publication in the *Official Gazette*, in the Farøe Islands also in the *"Dimmalaetting"*, and in addition

Mødet ere blevne bekendte med Tidspunktet for det nye Møde. Den særskilte Meddelelse skal indeholde Underretning om de i Akkordforslaget foretagne Ændringer.

I det nye Møde behøve Tillidsmændene ikke at være til Stede, medmindre Skifteretten skønner, at deres Nærværelse er nødvendig.

I dette Møde kan Skyldneren ikke gøre Forandring i eller Tillæg til sit Forslag.

8. Saavel Skifteretten som Tillidsmændene og enhver Fordringshaver har Ret til i de i forrige Paragraf omtalte Møder at forlange Skyldnerens Besvarelse af ethvert i Forbindelse med Akkordforhandlingen staaende Spørgsmaal. Afhøringen foretages af Skifteretten.

Paa tilsvarende Maade kan der aføskes enhver mødende stemmeberettiget Fordringshaver eller befuldmægtigt for en Fordringshaver Forklaring om Fordringshaverens Forretningsforhold til Skyldneren, og Skifteretten kan, hvor den anser saadant fornødent, med Aftens Varsel indkalde Fordringshavere, for saa vidt de bo eller dog for Tiden opholde sig i Retskredsen, til at komme til Stede i Mødet. Findes det fornødent at indhente Forklaring af Fordringshavere, der opholde sig udenfor Retskredsen, kan Skifteretten derom rette Begæring til vedkommende Skifteret, som uden Ophold har at efterkomme Begæringen.

Udebliver en indkaldt Fordringshaver uden oplyst lovligt Forfald, eller vægrer en Fordringshaver eller hans befuldmægtigede sig ved at besvare et til ham i Medfør af nærværende Paragraf stillet Spørgsmaal, kan Skifteretten ved Stemmeopgørelsen beslutte, at den paagældendes Stemme, hvis den er afgiven til Fordel for Akkorden, ej skal medregnes som saadan.

Er en i Henhold til Reglerne i nærværende Paragraf afgiven Forklaring usandfærdig, finde Straffelovens §§ 146 og 148 Anvendelse.

9. Afstemning over Skyldnerens Akkordforslag kan ske ved Indsendelse af skriftlig Stemme. En Fordringshaver, som ved Indgivelsen af Skyldnerens Andragende om Akkordforhandling har erklæret at stemme for Akkordforslaget, regnes at have indsendt skriftlig Stemme for dette, medmindre han har tilbagekaldt sin Erklæring, eller Forslaget i nogen som helst Henseende er blevet ændret.

10. I Spørgsmaalet om Akkordens Antagelse have Panthavere Stemmeret for den Del af deres Fordringer, for hvilken Pantet efter Skifteretten Skon ikke frembyder Sikkerhed, eller, hvis de frafalde Panteret for en større Del, da for denne.

De med Fortrinsret i Konkurstilfælde forsynede Fordringshavere have Stemmeret for den Del af deres Fordringer, for hvilken de frafalde Fortrinsret.

Fordringshavere, der skyldte noget til den akkordsøgende, have kun Stemmeret for den Del af deres Fordringer, der ikke vil blive dækket ved Modregning i Henhold til § 22.

11. Fra Afstemningen om Akkordspørgsmaalet udelukkes Fordringshavere, som ere Skyldnerens Ægtefælle, beslægtede i op- og nedstigende Linie, Søkende eller lige saa nær besvogrede, lige saa vel som Fordringshavere, der have faaet deres Fordringer tiltransporterede efter at være blevne bekendte med, at Skyldneren har tilkaldt Tillidsmænd efter § 1 Nr. 6 eller har standset sine Betalinger.

12. De Fordringshavere, hvis Fordringer ere bestridte, deltage foreløbig i Afstemningen om Akkordforslaget (§ 16).

13. Ejers en Fordring af flere i Forening, giver den dog ikke flere Stemmer, end om den ejedes af een.

Betingede Fordringer give Stemme, selv om Betingelsen for Fordringens Opstaaen ikke er indtraadt. Dog kan, for saa vidt Fordringen tilkommer flere, kun een af dem, og da navnlig den, der for Tiden maa anses for den nærmest berettigede Fordringshaver, afgive Stemme.

En Fordringshaver, der har flere Fordringer, har kun een Stemme.

14. Gaar Akkordforslaget ud paa at tilbyde de simple personlige Fordringshavere 50 pCt. eller derover, eller gaar det alene ud paa Betalingsudsættelse, kræves til dets Vedtagelse, at mindst to Trediedele af de mødende stemmeberettigede

(§ 6) special information shall be sent in registered letters to the known creditors who, owing to their absence from the meeting, have not been acquainted with the date of the new meeting. Such special information shall contain the particulars of the alterations made in the proposal of composition.

The impartial experts need not be present at the new meeting, unless the Court of Bankruptcy is of opinion that their presence is necessary.

At this meeting the debtor can neither alter nor supplement his proposal.

8. The Bankruptcy Court, as well as the confidential experts and every creditor, at the meetings of creditors mentioned in the preceding article, are entitled to demand that the debtor shall answer any question connected with the composition proceedings. The Court examines the debtor in regard to such questions.

Similarly, every creditor present having a right to vote, or his representative, may be asked to explain the business relations obtaining between the creditor in question and the debtor, and the Bankruptcy Court, where it considers such a course necessary, may convene creditors by a notice for the following day to a meeting, provided they reside or are temporarily staying within the jurisdiction. If it is found necessary to obtain explanations from creditors resident outside the jurisdiction, the Bankruptcy Court to this end may lodge a request with the competent Bankruptcy Court, which has to comply with such request without delay.

If a creditor who has been convened to a meeting is absent without having any known valid reason for such absence, or if a creditor or his representative refuses to answer a question put to him in accordance with the present Article, the Bankruptcy Court, when counting the votes, may decide that the vote of the creditor in question, if it has been given in favour of the proposed composition, shall not be counted.

If a declaration given according to the rules of the present Article is untrue, §§ 146 and 148 of the Penal Code apply.

9. Voting on the debtor's proposed composition may take place by sending in a vote in writing. A creditor who at the time when the debtor lodged his application regarding composition, has declared that he is going to vote for the proposal, is counted as having sent a vote in writing in favour of such proposal, unless he has withdrawn his declaration, or the proposal has in any respect been altered.

10. On the question as to the acceptance of the proposed composition, secured creditors have a right to vote in regard to that part of their claims for which their securities according to the estimate of the Bankruptcy Court offer no security, or, if they renounce the security in regard to a greater part, they have a right to vote in respect of such part.

The creditors provided with a right of preference in case of bankruptcy, have a right to vote in regard to that part of their claims for which they renounce their right of preference.

The creditors who owe something to the person applying for composition, have a right to vote only in regard to that part of their claims which will not be covered by means of a set-off according to § 22.

11. Creditors who are the debtor's spouse, his relatives in the ascending and descending line, his brothers and sisters, or equally near relatives by way of marriage, as well as such creditors as have had their claims transferred to them after having become acquainted with the fact that the debtor has summoned impartial experts in accordance with § 1 No. 6, or has suspended his payments, are excluded from voting on the question of composition.

12. The creditors whose claims are contested take part provisionally in the voting on the proposed composition (§ 16).

13. If a claim is owned by several persons in common, such claim does not for this reason give a right to more votes than if it were owned by one person only.

Conditional claims give a right to vote, even if the condition upon which the claim may arise has not yet been fulfilled. If such claims, however, are owned by several persons, only one of them, and in such case notably the one who at the time is considered as being the most interested creditor, is entitled to vote.

A creditor having several claims is only entitled to one vote.

14. If the proposal of composition purports to offer the simple personal creditors 50 per cent. or more, or if such proposal only purports to postpone payments, it requires for its acceptance that at least two thirds of the creditors present having

Fordringshavere, repræsenterende mindst tre Fjerdedele af det samlede Beløb af de stemmeretgivende Fordringer, stemme derfor.

Tilbyder Forslaget under 50 pCt., men dog mindst 25 pCt., kræves tre Fjerdedele i begge Henseender.

Tilbyder Forslaget under 25 pCt., kræves ni Tiendedele i begge Henseender.

Til de mødende Fordringshavere henregnes i denne Paragraf ogsaa de Fordringshavere, som have indsendt skriftlig Stemme (§ 9).

En Fordring henregnes til de stemmeretgivende, selv om Fordringshaveren ikke har anmeldt den.

15. Opnaas i det Møde, hvori Akkordforslaget sættes under Afstemning, vel det fornødne Stemmeantal i Henseende til Personerne eller i Henseende til Fordringsbeløbet, men ikke i begge Henseender, berammer Skifteretten et nyt Møde, som bliver at afholde snarest muligt og inden Forløbet af en Uge. Opnaas der ikke i dette Møde den i § 14 fordrede Stemme flerhed i begge Henseender, er Akkordforslaget forkastet.

Indvarslingen og særskilt Meddelelse til Fordringshaverne sker paa den i § 7 angivne Maade.

For saa vidt ingen modsat Meddelelse fremkommer, anses de Fordringshavere, der have tiltraadt Akkordforslaget, at fastholde deres Stemmegivning i det nye Møde.

16. Befindes det, at Stemmegivningens Resultat er forskelligt, eftersom de bestridte Fordringer eller de af deres Indehavere afgivne Stemmer (§ 12) regnes med eller ikke, har Skifteretten, efter at have anstillet nærmere Undersøgelse, at bestemme, hvor mange af de bestridte Fordringer og for hvilket Beløb disse skulle komme i Betragtning ved Afstemningen; dog behøver Skifteretten ikke at strække denne Undersøgelse længere end saa vidt, at Afstemningen giver et bestemt Resultat enten til Akkordens Antagelse eller Forkastelse, hvad enten de øvrige bestridte Fordringer regnes med eller ikke. Finder Skifteretten, at en saadan foreløbig Afgørelse efter de bestridte Fordrings Beskaffenhed ikke kan finde Sted, erklærer den Akkordforslaget for forkastet.

Denne Afgørelse er uden Virkning med Hensyn til Fordringens Bedømmelse, dersom den senere maatte blive gjort til Genstand for Retstvist.

17. Fordringshavere, hvis Fordringer have lovbestemt Fortrinsret i Konkurstilfælde, kunne ikke ved Akkorden tvinges til noget Afslag i eller nogen Henstand med deres Krav; de maa, naar de ikke selv give Afkald herpaa, tilfredsstilles for deres Fordrings fulde Beløb, saa snart disse forfalde. For saa vidt det til Fortrinsrettens Bevarelse udkræves, at Konkursen er indtraadt indenfor en vis Tid, og Fristen udløber under den offentlige Akkordforhandling eller i Løbet af en Maaned efter dennes Ophør, bevares Fortrinsretten dog, ifald Skyldneren kommer under Konkurs senest en Maaned efter Akkordforhandlingens Ophør.

Fordringshavere, som tage samme Plads i Konkursordenen, maa i Akkorden behandles paa lige Maade, medmindre nogen særlig samtykker i at underkastes en mindre gunstig Behandling end de andre.

18. De Fordringshavere, hvis Krav ere bestridte, blive i Akkorden foreløbig at behandle ganske paa samme Maade, som om Kravet ikke var bestridt.

Efter Paastand af vedkommende Fordringshavere kan Skifteretten ved Akkordens Stadfæstelse bestemme, at det paa Fordringen faldende Udbytte i det Omfang, hvori denne er bestridt, skal indsættes i en Bank eller Sparekasse efter de nærmere Regler, som Skifteretten bestemmer til Fordringshaverens Betyggelse. Naar Indsættelse besluttet, bestemmer Skifteretten samtidig en Frist, inden hvilken vedkommende Fordringshaver skal have godtgjort for Skifteretten, at han har anlagt Søgmaal. Naar Dom er falden, skal Beløbet fremdes forblive henstaaende, indtil Ankefristen er udløbet. Godtgøres det ikke inden den fastsatte Frist, at Søgmaal er anlagt, hvorom Skifteretten har at give Attest, kan Beløbet udtages.

a right to vote, and representing at least three fourths of the total amount of the claims giving a right to vote, should declare themselves in favour of the proposal.

If the proposal offers less than 50 per cent., but not less than 25 per cent., three fourths are required in both respects.

If the proposal offers less than 25 per cent., nine tenths are required in both respects.

Amongst the creditors present at the meetings of creditors within the meaning of this Article are also counted those creditors who have sent their votes in writing (§ 9).

A claim is counted amongst those giving a right to vote, even when the creditor in question has not given notice of such claim to the estate.

15. If at the meeting of creditors at which the proposal of composition in question is voted on, the required number of votes in regard to creditors or in regard to the amount of claims, but not in both respects, is certainly obtained, the Bankruptcy Court convenes a fresh meeting of creditors which shall take place as soon as possible and within a period of a week. If at this meeting the majority of votes required according to § 14 is not obtained in both respects, the proposal of composition is rejected.

The creditors are convened and receive special information in the manner indicated in § 7.

Provided that no information to the contrary is available, those creditors who have acceded to the proposal of composition are considered as maintaining their votes at the new meeting.

16. If it is found that the result of the voting is different according to whether the contested claims or the votes (§ 12) in respect thereof are counted or not, the Bankruptcy Court has to decide, after further examination, how many of the contested claims, and for what amount, shall be considered at the voting; the Court, however, need not extend its examination further than is necessary for ascertaining whether the voting gives a definite result with regard to either the acceptance or the rejection of the proposed composition, whether the other contested claims are counted or not. If the Bankruptcy Court finds that, owing to the nature of the contested claims, such a provisional decision cannot be given, the Court declares the proposal of composition rejected.

Such a decision does not affect the estimate of a claim if it is subsequently made the subject of litigation before the tribunals.

17. Creditors whose claims carry a legal right of preference in case of bankruptcy, cannot, on account of proceedings with a view to obtaining composition, be compelled to make any reduction or grant any delay in regard to the payment of their claims; if they do not make any reduction of their own free will, they must be paid the full amount of their claims as soon as they become due for payment. Where it is required for the maintenance of the right of preference that the bankruptcy in question should occur within a certain time, and the period expires during the public composition proceedings or within a month after the close of such proceedings, the right of preference is maintained notwithstanding, if the debtor becomes bankrupt at the latest within a month of the cessation of the proceedings for composition.

Creditors who in regard to their claims are entitled to be put on the same footing in bankruptcy, must be treated in the same manner in the composition, except where one or other of them consents to be subjected to less favourable treatment than the others.

18. The creditors whose claims are contested are provisionally dealt with in the composition, in the same manner in all respects as if their claims had not been contested.

At the request of the creditors in question, the Bankruptcy Court, when the proposed composition is confirmed, may decide that the dividend allotted to a claim, to the extent to which it is contested, shall be deposited in a bank or savings bank in accordance with the special rules which the Court draws up in regard to the security of creditors. When such a deposit is decided on, the Bankruptcy Court at the same time fixes a period within which the creditor in question must prove before the Court that he has brought an action. When judgment is given, the amount in question shall still remain deposited until the period for appeal has expired. If it is not proved within the period fixed that an action has been brought, in regard to which the Bankruptcy Court has to give a certificate, the amount may be withdrawn.



19. Afsluttet Akkord har ingen Indflydelse paa Fordringshaveres Rettigheder mod Forlovere og andre, som hæfte tillige med Skyldneren.

20. Panthavere berøres, for saa vidt deres Panteret angaar, ikke ved Akkorden. Deres personlige Fordring paa Skyldneren formindskes med det Beløb, som i sin Tid maatte blive dækket af Pantet. For det overskydende Beløb bindes de ved Akkorden.

21. Af rentebærende Fordringer beregnes i Akkorden kun Rente til den offentlige Akkordforhandlings Begyndelse.

Er der paa en Fordring tilsagt Rabat, fradrages denne, hvad enten de for Rabatten opstillede Betingelser ere opfyldte eller ikke. Af Rabat, tilsagt for kontant Betaling, skal dog alene fradrages, hvad der maatte overstige en Diskonto af 10 pCt. om Aaret.

Fordringshavere, hvis Fordringer ikke ere forfaldne, have Krav paa Betaling ifølge Akkorden samtidig med de andre Fordringshavere.

En ikke forfalden Fordring, der bærer ringere Rente end 4 pCt. om Aaret, ansættes kun til det Beløb, som den med Fradrag af Mellemrente er værd paa den Tid, da den offentlige Akkordforhandling begynder.

Paa tilsvarende Maade beregnes Fordringernes Vægt ved Afstemning.

22. Enhver, der skylder noget til den akkordsøgende, kan, dersom denne opnaar Akkord, deri afkorte, hvad han har at fordræ hos ham, uden Hensyn til Fordringens eller Modfordringens Beskaffenhed, saafremt Fordringen af Fordringshaveren selv eller af nogen, efter hvem han har arvet den, er erhvervet før Bekendtgørelsen om den offentlige Akkordforhandlings Begyndelse, uden at den akkordsøgende med Erhververens Vidende forberedte Akkord, eller den hidrører fra en Forpligtelse, som han under lige Forudsætninger har paadraget sig inden dette Tidspunkt. Rejses der Tvivl om Tidspunktet for Erhvervelsen, og kan dette ikke paa anden Maade oplyses, tilstedes det Fordringens Ejer med Ed at bekræfte Rigtigheden af sit Opgivende i saa Henseende, hvilken Ed kan modtages af Skifteretten.

Den akkordsøgende maa efter den offentlige Akkordforhandlings Begyndelse ikke borttransportere sine Haandskrifts krav paa en saadan Maade, at vedkommende Skyldners Ret til Modregning derved udelukkes, medmindre Sikkerhed stilles Skyldneren for det Tab, han derved maatte komme til at lide. Naar Skyldneren forlanger det, skal ved Akkordens Stadfæstelse de den akkordsøgende tilhørende Skylddokumenter forsynes med Skifterettens Paategning om, at Adgang til at forlange Modregning efter denne Paragraf forbeholdes, eller Sikkerhed stilles den til Modregning berettigede, hvilken sidste Fremgangsmaade altid skal benyttes ved Veksler. Skifterettens Afgørelser efter denne Paragraf ere uden Virkning med Hensyn til Bedømmelsen af Modfordringen, dersom den senere maatte blive gjort til Genstand for Retstvist.

23. Akkorden er, skønt antagen ved Fordringshavernes Afstemning, ikke gyldig førend den er stadfæstet af Skifteretten.

24. Efter at Akkorden er bleven antagen ved Fordringshavernes Afstemning, opfordrer Skifteretten dem, der maatte have Indsigelser at gøre mod Akkorden, til i Mødet at fremkomme med dem. Skifteretten kan derefter i samme Møde træffe Afgørelse om Akkordens Stadfæstelse. Men, hvis nogen Fordringshaver begærer Udsættelse for at fremkomme med Protest, skal Skifteretten udsætte Mødet en kort Tid, dog ikke over en Uge. Saadan Udsættelse kan Skifteretten ogsaa foretage af egen Drift. Naar Mødet udsættes, kan enhver Fordringshaver i Løbet af 4 Dage til Skifteretten indlevere skriftlig Protest mod Akkordens Stadfæstelse.

25. Akkordens Stadfæstelse bliver, selv om ingen Indsigelse er fremsat, ved begrundet Kendelse at nægte: 1. Naar de i § 4 nævnte almindelige Betingelser for Akkord ikke ere til Stede; — 2. Naar de i denne Lov foreskrevne Regler, som sigte til at sætte Fordringshavere i fuldstændig Kundskab om Boets Forhold, eller i øvrigt de med Hensyn til Fremgangsmaaden givne Bestemmelser i noget væsentligt



19. The conclusion of a composition does not affect the rights of creditors as against sureties and other persons jointly liable with the debtor.

20. Secured creditors, in so far as their security is concerned, are not affected by a composition. Their personal claims against the debtor are reduced by the amount which in due time may be covered by the security. For the amount of the surplus they are bound by the composition.

21. In the case of interest-bearing claims, interest is only allowed in the composition up to the commencement of the public composition proceedings.

If a reduction has been promised on a claim, the deduction is made whether the conditions stipulated for the reduction have been fulfilled or not. In case of a reduction promised for payment in cash, there shall only be deducted, however, the amount in excess of a discount of 10 per cent. per annum.

Creditors whose claims are not due for payment are entitled to claim payment in virtue of the composition at the same time as the other creditors.

A claim which is not due for payment, bearing interest inferior to 4 per cent. per annum, is only estimated at the amount which the claim is worth at the time of the commencement of the public proceedings for composition, after the deduction of the interest not then accrued.

The amounts of the claims are estimated in the same manner when voting takes place.

22. Any person who is indebted to the debtor who applies for a composition, may, if the composition is obtained, deduct from his debt any claim he may have against the latter, without having regard to the nature of the claim or of the cross-claim, provided the claim in question accrued either to the creditor himself, or to the person from whom he has inherited it, before the publication announcing the commencement of the public proceedings for composition, without it being necessary that the compounding debtor should have prepared the composition with the knowledge of the creditor, or if it has arisen from an obligation which on similar conditions the debtor incurred before this time. If doubt arises concerning the time at which such a claim was acquired, and if this time cannot be ascertained in any other way, the owner of the claim is permitted to confirm the correctness of his assertion in this respect on oath, and such oath may be taken before the Bankruptcy Court.

The person who applies for a composition must not, after the commencement of the public proceedings for composition, transfer his signed credits in such a manner that the interested debtor's right to bring about a set-off is excluded by such transfer, unless the debtor is given security for the loss he may thereby incur. When the debtor demands it, at the confirmation of the proposed composition, the documents relating to the claim of the person who applies for a composition, shall be provided with a note by the Bankruptcy Court stating that the right to demand a set-off in accordance with this Article is reserved, or that security is given to the person who is entitled to demand a set-off; this last proceeding shall always be applied in relation to bills of exchange. The decisions of the Bankruptcy Court in pursuance of this Article do not affect the estimate of the cross-claim, if afterwards it becomes the subject of litigation before the tribunals.

23. A composition, although accepted by the voting of the creditors, is not valid until it has been confirmed by the Bankruptcy Court.

24. When a proposed composition has been accepted by the voting of the creditors, the Bankruptcy Court calls upon those who may have objections to make against the composition to present them at the meeting. The court may then at the same meeting decide as to the confirmation of the composition. But if any creditor demands postponement in order to be in a position to present his objection, the Court shall postpone the meeting for a short time, not, however, for more than a week. The Bankruptcy Court may also decide upon such a postponement of its own motion. When the meeting has been postponed, every creditor may in the course of four days present his objection in writing against the confirmation of the composition.

25. The confirmation of a composition, even when no objection has been made, shall be refused by way of a reasoned decision: 1. When the general conditions for obtaining a composition mentioned in § 4 are not fulfilled; — 2. When the provisions of this Act designed to secure that the creditors may be completely informed of the position of the estate, or the regulations with regard to the procedure, have been

Punkt ere tilsidesatte; — 3. Naar Akkorden indeholder noget, som er i Strid med Bestemmelserne i denne Lovs §§ 17—22 og § 32 eller i øvrigt er lovstridigt; — 4. Naar der for at fremkalde Akkorden eller fjerne Hindringer for denne hemmeligt eller aabenlyst er sket Begunstigelse af nogen Fordringshaver eller givet Løfte om saadan, være sig fra Skyldnerens Side eller af nogen Trediemand; — 5. Naar der ikke haves antagelig Betyggelse for Akkordens Opfyldelse.

26. Efter Andragende fra nogen af de Fordringshavere, der berøres af Akkorden, skal Skifteretten endvidere ved begrundet Kendelse nægte Stadfæstelse, naar det paavises, at Akkorden ikke stemmer med Fordringshavernes fælles Interesse, saasom fordi den tilbudte Dividende staar i betydeligt Misforhold til Skyldnerens Midler, eller — hvor Skyldnerens Forretning agtes fortsat — fordi de fastsatte Betalingsterminer medføre en Udsættelse med Betalingen, der ikke findes begrundet ved et rimeligt Hensyn til Opretholdelse af Skyldnerens Forretning.

27. Kundgørelse af Skifterettens Beslutning om Akkordens Stadfæstelse eller Kundgørelse om Akkordens endelige Forkastelse eller en begyndt Akkordforhandlings Ophor f. Eks. paa Grund af Skyldnerens Død, inden der foreligger af Skifteretten stadfæstet Akkord, eller af andre Grunde sker paa den i § 6 foreskrevne Maade, hvorhos der ved Skifterettens Foranstaltning meddeles samtlige kendte Fordringshavere Underretning derom.

28. Den af Skifteretten stadfæstede Akkord er at betragte som et imellem Skyldneren og de i Akkorden anerkendte Fordringshavere indgaaet Retsforlig, og den har de et saadant tilkommende Retsvirkninger.

29. Den af Skifteretten stadfæstede Akkord er ogsaa bindende for de Fordringshavere, der ikke have meldt sig under Akkordforhandlingen, for saa vidt de ikke have Pant eller anden Fortrinsret. Akkorden befrier Skyldneren for den Del af enhver før Akkordforhandlingens Begyndelse (§ 5) stiftet Gæld, som ikke ved Akkorden er overtagen, saavel lige over for Fordringshaveren selv som lige over for Forlovere og andre, der tillige med ham hæfte for Gælden. Herfra undtages dog Gældsforpligtelser, som Skyldneren til sin Forretnings Fortsættelse med de i Anledning af Akkordopgørelsen tilkaldte Tillidsmænds Samtykke har paadraget sig før Akkordforhandlingens Begyndelse.

30. Enhver udenfor eller ved Siden af Akkorden truffen Overenskomst, hvorefter der af Skyldneren eller af Trediemand indrømmes nogen Fordringshaver større Fordele eller bedre Betingelser, end der aabenlyst er ham tilstaaet i Akkorden, er ugyldig.

31. Dersom det inden 3 Aar efter Akkordens Stadfæstelse opdages, at Skyldneren med Hensyn til Akkorden har gjort sig skyldig i bedrægeligt Forhold, eller at der, for at fremkalde en Tvangsakkord eller fjerne Hindringer for en saadan, hemmeligt af Skyldneren eller af andre med dennes Vidende er indrommet nogen Fordringshaver Fordele eller er givet ham Løfte om Fordele fremfor de øvrige Fordringshavere, da er Skyldneren pligtig at betale til alle Fordringshavere, der ikke have deltaget i Misligheden, ogsaa de ham ved Akkorden eftergivne Dele af deres Fordringer, og han taber i Forhold til de samme Fordringshavere den ham ved Akkorden indrommede Henstand, uden at dermed enten Forlovere for Akkorden løses fra de af dem overtagne Forpligtelser eller Fordringshavere tabe nogen dem ved Akkorden indrommet Rettighed.

32. Akkord, som Skyldneren har opnaaet efter denne Lov, bortfalder ikke, fordi den ikke holdes; men i Skyldnerens Konkursbo have de Fordringshavere, som ere bundne ved Akkorden, Krav paa Udlæg lige med de andre Fordringshavere i Forhold til deres Fordrings Beløb uden Hensyn til den ved Akkorden skete Nedskrivning, men efter Fradrag af derefter skete Afbetalinger, dog at Udlæget i Konkursboet i Forbindelse med for nævnte Afbetalinger ikke overstiger, hvad der efter Akkorden tilkommer dem.

33. Naar nogen, der har opnaaet Tvangsakkord efter denne Lov, findes under Akkordforhandlingen eller med denne for Øje at have foretaget nogen af de i Straffe-

disregarded in any essential point; — 3. When the proposed composition contains anything contrary to the provisions of §§ 17—22 and § 32 of this Act, or in some other respect is contrary to law; — 4. When in order to bring about the composition or to remove obstacles to it, any creditor has been secretly or openly favoured or has obtained any promise of such favour, whether on the part of the debtor or on that of any third person; — 5. When there is no sufficient guarantee available that the proposed composition will be carried out.

26. At the request of any of the creditors affected by the composition in question, the Bankruptcy Court shall, furthermore, by means of a reasoned decision, refuse confirmation when it is proved that the proposed composition does not accord with the common interests of the creditors, as, for example, when the dividend offered is seriously disproportionate to the debtor's means, or — when it is intended to continue the debtor's business — because the dates fixed for the payment of dividends will bring about a postponement of the payment of claims, for which the continuation of the debtor's business affords no sufficient reason.

27. The publication of the decision of the Bankruptcy Court with regard to the confirmation of the composition, or the publication of the final rejection of the composition, or of the suspension of the composition proceedings commenced, which, for example, may occur owing to the debtor's death before the Court has confirmed the proposal, or for other reasons, takes place in the manner indicated in § 6; and in addition the Court sees that all the known creditors are informed of the circumstance.

28. A composition confirmed by the Bankruptcy Court is to be considered as a judicial compromise concluded between the debtor and the creditors recognised in the composition, and it entails the legal consequences resulting from such a compromise.

29. A composition confirmed by the Bankruptcy Court is also binding on the creditors who have not given notice of their claims during the composition proceedings, provided they have no pledge or other preferential right. Such a composition discharges the debtor from that part of any debt incurred before the commencement (§ 5) of the composition proceedings which has not been comprised in the composition, both as against the creditors themselves and as against sureties and other persons who are jointly liable with the debtor for the debt. Liabilities which the debtor, with a view to continuing his business, has incurred before the commencement of the composition proceedings, with the consent of the impartial experts called upon to assist in the settlement of the composition in question, are however excepted from this rule.

30. Any agreement concluded outside or beside a composition, by which the debtor or a third person has granted any creditor greater privileges or better conditions than have been openly conceded to him in the composition, is null and void.

31. If, within three years of the confirmation of a composition, it is discovered that the debtor, in connection with the composition in question, has been guilty of fraudulent conduct, or that, in order to bring about a composition or remove the obstacles to it, the debtor or other persons with his knowledge have secretly granted any creditor advantages or promised him advantages to the detriment of the other creditors, the debtor is liable to pay all the creditors who have taken no part in the unlawful operations, those parts also of their claims from which he has been discharged by the composition, and he forfeits as regards the same creditors the extensions of time for payment granted to him by the composition; at the same time, however, sureties for the composition are not discharged from the obligations which they may have contracted, nor do the creditors lose any of the rights granted to them according to the composition.

32. The composition which a debtor has obtained according to this Act, does not become void because it is not carried out; but those creditors who are bound by the composition have a right to claim a dividend in the debtor's bankruptcy estate on an equal footing with the other creditors in proportion to the amount of their claims, without regard to the reduction made by the composition, but after deduction of such part-payments as may have been subsequently made, to the effect, however, that the dividend obtained from the bankruptcy estate in respect of the aforesaid part-payments shall not exceed what is due to them according to the composition.

33. If any person, having obtained a composition according to this Act, is found to have done any of the acts mentioned in § 260 or § 261 of the Penal Code

lovens § 260 eller § 261 nævnte Handlinger, anses han med de i disse Paragraffer foreskrevne Straffe.

34. Skifteretten er berettiget til i større og besværligere Boer undtagelsesvis at antage en lønnet Medhjælper til at bistaa sig med Korrespondance m. m. Medhjælperlønnen udredes som de øvrige Akkordudgifter af Akkordboet. Ingen, som staar i Tjenesteforhold til eller er ansat i Skifteretten, kan antages som lønnet Medhjælper.

Vederlaget til Medhjælperen fastsættes af Skifteretten, der i Tilfælde af Uenighed ligeledes fastsætter Størrelsen af det Vederlag, der tilkommer de autoriserede Tillidsmænd og andre for deres Virksomhed under Forberedelserne til Akkordforhandlingen (derunder Vederlag for privat Administration af Skyldnerens Forretning, hvis saadan maatte have fundet Sted) og under selve den offentlige Akkordforhandling. Vederlaget bestemmes ikke procentvis i Forhold til Boets Størrelse, men i Forhold til Ulejligheden og Sagens Beskaffenhed i det hele. Skifterettens Kendelse har Fuldbyrdelseskraft som en Dom.

Efter samme Regler fastsættes ogsaa paa Begæring det Tillidsmændene tilkommende Vederlag, naar Skyldneren, efter at have tilkaldt Tillidsmænd og benyttet deres Bistand, undlader at begære Akkordforhandling aabnet for Skifteretten, eller hans Begæring derom afslaaes.

Fortegnelse over samtlige Omkostninger ved den offentlige Akkordforhandling og dens Forberedelse, saa vel de allerede paaløbne som dem, der paaregnes at ville paaløbe, skal fremlægges i det i § 7 omtalte Mode.

Krav paa de ovenfor nævnte Vederlag og Krav paa Godtgørelse for Udgifter ved offentlig Akkordforhandling og Forberedelse dertil berøres, selv om de ere opstaaede for den offentlige Akkordforhandlings Begyndelse, uanset Bestemmelsen i § 29, ikke af Akkorden og give, naar Akkordforhandling efter denne Lov har været begyndt derved, at Skifteretten har taget Skyldnerens derom fremsatte Andragende til Følge, Ret til Dækning efter de i Konkursloven af 25. Marts 1872 § 34 nævnte Fordringer, men forud for simpel personlig Gæld i Skyldnerens Konkursbo, dersom Konkurs paafølger i Lobet af 3 Maaneder efter den offentlige Akkordforhandlings Ophør.

Med samme Virkning som i forrige Stykke omhandlet skal Skyldneren dernæst efter den offentlige Akkordforhandlings Begyndelse kunne stifte Gæld, naar en af Skifteforvalteren dertil beskikket Mand meddeler skriftligt Samtykke til, at Skyldneren paatager sig Forpligtelsen. En saadan Beskikkelse kan Skifteretten dog kun meddele, saafremt to Femtedele af de kendte, i Akkorden stemmeberettigede Fordringshavere efter Tal og Vægt andrage derpaa og udpege en Mand, der erklærer sig villig og af Skifteretten anses egnet til at overtage dette Hverv. Den her omhandlede Gældsstiftelse bør ikke strækkes videre end til det for Opretholdelsen af Skyldnerens Virksomhed strengt nødvendige; men Gældens Fortrinsstilling i Konkursen er ikke betinget af, at denne Begrænsning iagttages.

35. Der oprettes en Domstol under Benævnelse Akkordretten, til hvilken Skifterettens Beslutninger under Akkordforhandling efter denne Lov indankes til endelig Afgørelse, for saa vidt de ere Genstand for Appel og blive paaankede. Domstolen, hvis Sæde er i København, skal bestaa af en retskyndig Formand og fire forretningskyndige Medlemmer.

Som retskyndig Formand beskikkes af Kongen for 3 Aar ad Gangen en Mand, der er eller har været Medlem af Højesteret eller en af Overretterne, og som for denne Virksomhed oppebærer et Honorar, der bestemmes paa Finansloven.

De forretningskyndige Medlemmer beskikkes af Justitsministeren. Beskikkelsen gælder for en Tid af 4 Aar; dog aftræde af dem, der første Gang beskikkes, to Medlemmer ifølge Lodtrækning efter 2 Aars Forløb.

Den fornødne Sum til Kontorhold for Akkordretten bestemmes paa Finansloven.

during the composition proceedings, or with such proceedings in view, he is subject to the punishments provided in those Articles.

34. In the case of important and complicated estates, the Bankruptcy Court is exceptionally authorised to employ a paid assistant to aid in carrying on the correspondence, etc. The assistant's salary, like other disbursements in connection with the composition, is defrayed by the composition estate. No person employed by or fulfilling any official duty in connection with the Bankruptcy Court, shall be employed as such assistant.

The salary of this assistant is fixed by the Bankruptcy Court, which, in case of disagreement, also fixes the amount of the fees due to the authorised impartial experts and other persons for their work done during the preparations for the composition proceedings (amongst such fees being the compensation for the private administration of the debtor's business, if such administration has taken place) and during the public composition proceedings themselves. Such compensation is not fixed according to a percentage of the amount of the estate, but according to the trouble and the nature of the matter in general. The decisions of the Bankruptcy Court have the same executive force as ordinary judgments. The fee due to the impartial experts, is, on request, also fixed according to the same rules, when the debtor, having called upon experts and availed himself of their assistance, omits to lodge an application for composition with the Bankruptcy Court, or his application for a composition is rejected.

A list of all the expenses incurred owing to the public proceedings for composition and the preparations for such proceedings, as well of those already incurred as of those which are expected to be incurred, shall be submitted to the meeting mentioned in § 7.

Claims in respect of the aforesaid compensations and claims for the reimbursement of expenses incurred in relation to public proceedings for composition and preparations for such proceedings, even when they have been incurred before the commencement of the public proceedings, are not affected by the composition, in spite of the rule contained in Art. 29, and, when the proceedings for a composition in pursuance of this Act have been brought about by the circumstance that the Bankruptcy Court has accepted the application made by the debtor in this regard, they rank for payment out of the debtor's bankruptcy estate after the claims mentioned in § 34 of the Bankruptcy Act of 25 March 1872, but before the simple personal debts, if bankruptcy ensues within 3 months after the termination of the public proceedings for composition.

With the same effect as is mentioned in the preceding paragraph, the debtor, after the opening of the public proceedings for composition, may, furthermore, incur debts when a person, nominated for this purpose by the judge of the Bankruptcy Court, gives his consent in writing to the assuming of the liability by the debtor. The Bankruptcy Court, however, is not authorised to nominate such a person, unless — both according to their number and the amount of their claims — two fifths of the known creditors having a right to vote on the composition in question make an application to this effect and point out a person who declares himself willing and by the Bankruptcy Court is considered fit to undertake this charge. The incurring of debts here dealt with ought not to exceed what is strictly necessary for the continuation of the debtor's business; but the privileged position of such a debt in the bankruptcy is not dependent on the condition that this restriction has been observed.

35. A tribunal shall be established under the name of the Court of Composition, to which shall be submitted for final decision, the decisions given by the Bankruptcy Court during the proceedings for composition according to this Act, provided that they are subject to appeal and are appealed against. This tribunal, having its site in Copenhagen, shall consist of a lawyer as president and of four members acquainted with the business of the tribunal.

The president, who must be a lawyer, is appointed by the King for a period of three years and must be or have been a member of the Supreme Court or one of the Appeal Courts; he obtains for this function a salary which is fixed in the Finance Act.

The other members are appointed by the Minister of Justice for four years, and of those of them who are first appointed, two members retire, as decided by lot, after two years' office.

The amount necessary for the clerical staff of the Court of Composition is fixed in the Finance Act.

Retten sættes for hver enkelt Sag af Formanden med to forretningskyndige Medlemmer.

I Tilfælde, hvor der ndkræves Sagskundskab, som Retten ikke er i Besiddelse af, skal Retten, hvis det forlanges af nogen af Sagens vedkommende, tilkalde som sagskyndigt Medlem en Mand, der har særligt Kendskab til den Slags Forretning eller Erhverv, som vedkommende Skyldner driver.

36. Begæring om en Kendelses Provelse ved Akkordretten indgives skriftligt til Skifteretten i Lobet af 3 Dage; dog er Fristen 2 Uger for Indankning af Kendelse, hvorved Akkorden stadfæstes. Skifteretten tilstiller uden Ophold Akkordretten Begæringen og Sagens Dokumenter samt Udskrift af Retsprotokollen, hvorhos Retten kan vedføje sin egen Erklæring.

Enhver, for hvem den indankede Afgørelse er af Betydning, kan indgive skriftlige Udtalelser til Akkordretten.

Nye Anbringender og Oplysninger kunne fremfores, og Akkordretten kan ogsaa af egen Drift indhente Oplysninger eller Erklæringer fra Skifteretten samt fra Skyldneren eller andre, hvem Sagen vedkommer.

Afgørelse træffes snarest muligt og i Reglen inden Udlobet af to Uger fra den Dag, da Sagen indkom til Akkordretten.

I øvrigt bestemmer Retten selv sin Forretningsgang.

37. Skyldneren kan paaanke Kendelse af Skifteretten, hvorved hans Andragende om Akkordforhandlings Aabning afslaaes, eller hvorved paaabegyndt Akkordforhandling i Henhold til § 3, sidste Stykke, standses, eller hvorved Akkordens Stadfæstelse nægtes. I de to sidstnævnte Tilfælde betragtes Akkordforhandlingen først som ophørt, naar enten Ankefristen er udløben, uden at Kendelsen er paaanket, eller Akkordretten har stadfæstet Kendelsen eller Akkorden.

Kendelse, hvorved Akkorden stadfæstes, kan paaankes af enhver Fordringshaver, der berøres af Akkorden.

Endvidere kunne Skifterettens i § 34, 2det og 3die Stykke omtalte Kendelser paaankes. Akkordrettens Kendelse har i disse Tilfælde Fuldbyrdelseskraft som en Højesteretsdom.

Udenfor de i denne Paragraf nævnte Tilfælde kunne Skifterettens i denne Lov omhandlede Beslutninger ikke paaankes.

38. For Skifterettens Virksomhed ved offentlig Akkordforhandling erlægges følgende Afgift, der beregnes efter Værdien af Skyldnerens Ejendele, saaledes som denne er opgivet i hans med Andragendet om Akkord til Skifteretten indleverede Statusopgørelse:

$\frac{1}{2}$  pCt. af de første 20,000 Kr.,

$\frac{1}{4}$  pCt. af de næste 80,000 Kr. og

$\frac{1}{8}$  pCt. af det overskydende Beløb.

Dog betales i intet Tilfælde mindre end 25 Kr. eller mere end 500 Kr.

Ved Udregningen af denne Afgift afrundes det Beløb, hvoraf den regnes, til hele og halve Hundreder, saaledes, at hvad der er under 25 Kr. bortkastes, og 25 indtil 50 Kr. regnes for 50 Kr.

Afslaaes Andragende om Akkordforhandling, betales derfor 10 Kr. Afgiften tilfalder Statskassen.

Dersom Skyldneren gaar fallit i Lobet af tre Maaneder efter Afgivelsen af den Kendelse, hvorved Akkordforhandlings Aabning nægtes, eller i Lobet af 3 Maaneder efter, at Akkordforhandlingen er ophørt, afdrages, selv om Akkord blev opnaaet, Akkordafgifterne i Skifteafgifterne under Konkursen.

For Sagens Behandling ved Akkordretten betales intet. Men Retten kan, hvis Anken findes at have manglet rimelig Grund, paalægge den ankende en Statskassen tilfaldende Bøde af indtil 500 Kr.

The Court, in each cause it has to decide upon, is composed of the president and two members acquainted with the business of the Court.

In cases requiring the knowledge of experts which none of the members of the Court possess, the Court, if it is demanded by any person interested in the matter, shall call upon a person to sit in Court as an expert who is specially acquainted with the kind of business or trade in which the debtor in question is engaged or carries on.

36. Demands for the examination of decisions of the Court of Composition are lodged in writing with the Bankruptcy Court in the course of three days; the period is, however, two weeks in the case of an appeal against a decision confirming a composition. The Bankruptcy Court without delay transmits the demand to the Court of Composition, at the same time sending the documents of the cause and a copy of the record of the Court; the Court may also make an additional statement as it deems proper.

Any person interested in the decision against which the appeal is lodged may send his observations in writing to the Court of Composition.

Fresh points of view and information may be presented, and the Court of Composition may also, of its own motion, procure information and declarations from the Bankruptcy Court which is concerned, and from the debtor and other persons interested in the matter.

The decisions of the Court are given as soon as possible and as a general rule within two weeks from the day on which the cause in question was lodged with the Court of Composition.

The Court itself regulates its own course of proceeding.

37. The debtor who is concerned may appeal against a decision given by the Bankruptcy Court, when his application requesting the opening of the proceedings for composition is rejected, or when the proceedings for composition commenced are suspended according to § 3, last paragraph, or when the confirmation of a composition is refused. In the two last cases, the proceedings for composition are only considered suspended when either the period for appeal has expired without the decision rendered having been appealed against, or when the Court of Composition has confirmed the decision or the composition.

A decision confirming a composition may be appealed against by any creditor affected by the composition.

Further, the decisions of the Bankruptcy Court mentioned in the second and third paragraphs of § 34 may be appealed against. The decision of the Court of Composition in these cases has the same executive force as a judgment of the Supreme Court.

In cases other than those mentioned in this Article the decisions of the Bankruptcy Court dealt with in this Act are not subject to appeal.

38. For the operations of the Bankruptcy Court in the case of public proceedings for composition, the following dues are paid, which are calculated according to the value of the debtor's property as it has been estimated in the balance-sheet sent to the Bankruptcy Court with the application for a composition.

$\frac{1}{2}$  per cent. of the first 20 000 kroner,

$\frac{1}{4}$  per cent. of the next 80 000 kroner, and

$\frac{1}{8}$  per cent. of the amount in excess.

In no case, however, is less than 25 kroner nor more than 500 kroner paid.

When these dues are calculated, the amount on which they are calculated is rounded off to entire or half hundreds, to the effect that amounts under 25 kroner are ignored, and amounts between 25 and 50 kroner are counted as being equal to 50 kroner.

If an application with a view to obtaining a composition is rejected, 10 kroner are paid. These dues are paid over to the Exchequer.

If the debtor becomes bankrupt in the course of three months after the decision has been rendered which rejects the application for the commencement of the proceedings for composition, or in the course of three months after the close of the proceedings for composition, the composition dues, even when a composition has been obtained, are deducted from the expenses of the liquidation during the bankruptcy.

The proceedings before the Court of Composition are free of charge. But the Court, when of opinion that an appeal has been without reasonable ground, may fine the appellant 500 kroner, to be paid over to the Exchequer.

39. Den i Konkurslovens Kapitel 13 aabnede Adgang for handlende, Fabrikant og Skibsredere til under Konkurs at opnaa Akkord skal — med Iagttagelse af de der foreskrevne Regler, for saa vidt disse ikke have særligt Hensyn til Skyldnerens Egenskab af handlende, Fabrikant eller Skibsreder — ogsaa staa aaben for andre end de nævnte næringsdrivende.

## Handelsretlige Bilove m. m.

### A. De Aktie-, Bank- og Børsvæsen vedrørende Love m. m.

I. Der findes ingen dansk Lovgivning specielt vedrørende Aktievæsenet udover hvad der er omtalt ovf. S. 49 ff.

II. Som Retsregler, specielt vedrørende Bankvæsenet maa særlig nævnes:

Oktroi for Nationalbanken i Kjobenhavn paa 90 Aar af 4 Juli 1818 med et Tillæg af 4 Februar 1820 jfr. Lov Nr. 157 af 12 Juli 1907 om Forlængelse af Nationalbankens Oetroi.

Reglement for Nationalbanken i Kjobenhavn, jfr. Bkg. Nr. 172 af 22 Juni 1908.

Kundgørelse angaaende Bestemmelser for Funderingen af Nationalbankens Sedler af 20 December 1873 med Tillægsbestemmelser af 2 November 1877, 19 Februar 1886, 10 November 1894, 25 Juni 1897, 27 December 1897, 11 April 1901 og 22 November 1907.

Lov af 25 Marts 1872, hvorved Regeringen bemyndiges til at meddele „den danske Landmandsbank, Hypothek- og Vexelbank i Kjobenhavn“ forskellige Begunstigelser.

Lov Nr. 64 af 28 Maj 1880 om Spare- og Laanekasser, hvis § 11, jvf. Lov Nr. 65 af 7 April 1899, angaar Banker, der drive Sparekassevirksomhed.

Lov Nr. 23 af 1 Marts 1889 om Handelsregister, Firma og Prokura (Firmaloven), hvis § 35 til „Handlende“ i Firmalovens Forstand henfører bl. a. Enhver, Enkeltmand eller Selskab, som søger stadigt Erhverv ved at drive Vexeller- eller Bankforretninger.

Ved Lov Nr. 96 af 6 April 1906 om Oprettelse af „Kongeriget Danmarks Hypotekbank“ er bestemt, at der (§ 1) under dette Navn oprettes et Institut, der har til Formaal gennem Optagelse af Laan i Udlandet at skaffe det danske Pengemarked de Fordele, der maatte kunne opnaaes ved en saadan mere direkte Forbindelse med de udenlandske Pengemarkeder. Laanene optages mod Hypotekbankobligationer, som ere sikrede ved Hypotekbankens samtlige Aktiver, jvf. nedenfor § 10.

Ifølge § 2 har Hypotekbanken sit Sæde i Kjobenhavn.

Ifølge § 3 forstrækker den danske Stat Hypotekbanken med dens Grundfond, der fastsættes til et Beløb af 20 Millioner Kr. Denne Kapital, der forbliver Statens Ejendom og forrentes for Statens Regning, ydes derved, at Staten deponerer 20 Millioner Kr. nominelt i 3½ p. Ct. indenlandske Statsobligationer eller et af Finansministeriet udstedt Indskrivningsbevis paa dette Beløb. Renten tilfalder Statskassen, saalænge Grundfonden ikke angribes. Kapitalen tjener som yderligere Garanti for Ihændehaverne af de af Banken udstedte Obligationer. Denne Kapital kan kun forhojes ved Midler, tilskudte af Staten eller ved Overførelse fra Reservefonden.

Statens Haftelse overfor Bankens Forpligtelser er begrænset ved Grundfondens Størrelse. Staten kan ikke forlange Tilbagebetaling af den Banken ydede Kapital, forinden Banken har ophørt med sin Virksomhed og opfyldt alle sine Forpligtelser.

Ifølge § 4, 1. Stykke udsteder Hypotekbanken Obligationer, lydende paa Ihændehaveren. Beløbet af de til enhver Tid i Kraft værende Obligationer maa ikke overstige det ottedobbelte Beløb af Bankens Grundfond.

Iøvrigt indeholder §§ 4—9 en Række Bestemmelser om, at Umyndiges Midler skulle kunne anbringes i Hypotekobligationerne, om Notering eller Indskrivning af Obligationerne, om deres Form, Fordeling i Serier, Amortisation og Indfrielse, om Renternes Udbetaling m. m.



39. The right given by Chapter 13 of the Bankruptcy Act whereby traders, manufacturers and shipowners may obtain a composition during bankruptcy, shall, — having due regard to the rules there provided in so far as they do not specially bear on the debtor's capacity as a trader, manufacturer or shipowner — also apply to other persons than those engaged in the aforesaid occupations.

## Supplementary Commercial Laws etc.

### A. Acts concerning Shares, Banking and Exchanges etc.

I. Beyond what has been said above, p. 49 *et seq.* there is no special Danish legislation on the subject of shares.

II. As legal rules specially concerning *banking* should notably be mentioned:

*The concession for the National Bank* of Copenhagen of 90 years from 4 July 1818, with a Supplement of 4 February 1820. See Act No. 157 of 12 July 1907 concerning the prolongation of the concession of the National Bank.

*The Regulations of the National Bank* of Copenhagen; see the publication No. 172 of 22 June 1908.

The publication concerning the regulations with regard to the funds available for the notes of the National Bank of 20 December 1873, with Supplementary Regulations of 2 November 1877, 19 February 1886, 10 November 1894, 25 June 1897, 27 December 1897, 11 April 1901 and 22 November 1907.

Act of 25 March 1872 authorising the Government to grant "the *Danish Peasants' Bank*, Mortgage and Bills of Exchange Bank of Copenhagen" various privileges.

Act No. 64 of 28 May 1880, concerning savings and loan banks, § 11 of which (see Act No. 65 of 7 April 1899) concerns *banks operating as savings banks*.

Act No. 23 of 1 March 1889, concerning commercial registers, firms and proxies (the Firms Act), § 35 of which, under the heading "traders" in the sense of the Firms Act, amongst others comprises any person, whether an individual or an association, carrying on a regular business as a money-changer or banker.

Act No. 96 of 6 April 1906, concerning the establishment of the *Mortgage Bank of the Kingdom of Denmark*", provides that (§ 1) under this name shall be established an institute having as its object, by means of contracting loans abroad, to provide the Danish money market with those advantages which may be obtained by more direct relations with foreign money markets. The loans are contracted against the issue of bonds of the Mortgage Bank, which are guaranteed by all the assets of the Mortgage Bank; see below § 10.

According to § 2 the Mortgage Bank has its domicile in Copenhagen.

According to § 3 the Danish State advances to the Mortgage Bank the funds necessary for the establishment of the bank, funds which are fixed at an amount of 20 million kroner. This capital, which remains the property of the State and bears interest for the account of the State, is provided in the following manner: The State nominally deposits 20 million kroner in the form of Danish State bonds at 3½ per cent. or a security for this amount issued by the Ministry of Finance. The interest accrues to the Exchequer so long as the original fund remains intact. The capital serves as a further guarantee for the holders of the bonds issued by the bank. This capital can only be augmented by means provided by the State or by transfer from the guarantee fund.

The responsibility of the State in regard to the liabilities of the bank is limited by the amount of the original fund. The State cannot claim to have the capital which has been granted to the bank refunded, until the bank has ceased its operations and carried out all its obligations.

According to § 4, 1st paragraph, the Mortgage Bank issues bonds to bearer. The amount of the bonds which are at any time in force must not exceed eight times the amount of the original fund of the bank.

Further, §§ 4—9 contain a series of regulations concerning the means of minors, providing that such means may be invested in the mortgage bonds, concerning the current value and registration of the bonds, concerning their form, division into series, amortisation and redemption, the payment of interest, etc.

Det hedder derefter i § 10:

„Hypotekbanken virker i tre Retninger og inddeles derfor indadtil i tre Afdelinger. De af Banken optagne Laan skulle udelukkende anvendes til Erhvervelsen af Obligationer vedrørende en af Bankens tre Afdelinger. Første Afdeling rummer Obligationer, udstedte af danske Kreditforeninger, hvis Udlaan ikke maa prioriteres ud over  $\frac{3}{5}$  af de pantsatte Ejendommers Vurderingssummer, og i hvis Obligationer det er tilladt at anbringe umyndiges Midler, samt Obligationer, udstedte af Kreditforeningen af Kommuner i Danmark. Anden Afdeling skal, naar den i Lov Nr. 100 af 15 Maj 1903 foreskrevne Tiendebank er oprettet, omfatte Obligationer, udstedte af denne. Tredie Afdeling rummer Obligationer, for hvilke den danske Statskasse har paataget sig fuld Garanti i Henhold til Lov af Dags Dato om Ændringer i Bestemmelserne om Udredelse af Statslaan til Jordlodder for Landarbejdere.

Ved Indkøbet til første Afdeling iagttages det, at Formaalet er at gavne danske Ejendomsbesiddere ved under Hensyn til Forbindelsen med de udenlandske Pengemarkeder at højne Kursen paa danske Kreditforeningsobligationer. Erhvervelsen af disse bør ske i nogenlunde lige Forhold til de enkelte Kreditforeningers Udlaansmasse i de 2 nærmest foregaaende Terminer, hvilket Hensyn dog ikke skal være afgørende ved Indkøb af de saakaldte Husmandskreditforeningsobligationer. Indkøb skal derhos udelukkende ske i Kreditforeningernes Obligationer af de aabne Serier. Dersom en Kreditforenings i Kraft værende Obligationsmasse af aabne Serier ved Udløbet af det sidste Kvartal, før Hypotekbanken har meddelt Foreningen, at den agter at paabegynde sine Indkøb, udgjorde mindst 10 Mill. Kr., kan Indkøb af dens Obligationer kun ske, saafremt en ny Serie aabnes og da kun af de til denne eller senere aabnede Serier hørende Obligationer.

Naar det besluttet af Direktionen med Tilsynsraadets Samtykke, kan dog Indkøb af Obligationer fra saadanne Kreditforeninger, hvis Udlaansmasse af aabne Serier paa det anførte Tidspunkt ikke udgør 10 Mill. Kr., ogsaa betinges af, at der aabnes en ny Serie, og Indkøbet skal i saa Fald udelukkende ske af de til denne eller senere aabnede Serier hørende Obligationer.

Ved Indkøbet til anden Afdeling iagttages, at Afdelingens Formaal er dels at virke som Regulator med Hensyn til de Bevægelser, for hvilke Udbudet af Tiendeb obligationer maa antages at udsætte det danske Pengemarked, dels at skaffe Afdelingen saa stor Fortjeneste som muligt.

I 3die Afdeling overtages de paagældende Obligationer til en Kurs, der fastsættes ved Overenskomst mellem Finansministeren og Banken saa vidt muligt saaledes, at Hypotekbanken hverken har Fortjeneste eller Tab ved Indkøbet.

De erhvervede Obligationer blive efter Ministeriets nærmere Bestemmelse enten ved Forbudspaategning fra Finansministeriet eller ved Deponering i dette at baandlægge som Sikkerhed for de i Kraft værende Hypotekobligationer, der altsaa ere sikrede dels ved disse Obligationer og dels ved Hypotekbankens Grundfond og Reservefond. Finansministeren bestemmer derhos efter Direktionens Indstilling, i hvilket Forhold en Serie Hypotekobligationer skal anvendes til Indkøb af Obligationer af de forannævnte 3 Arter.

Forinden Hypotekbanken har erhvervet de et optaget Laan modsvarende Obligationer, bliver Laanets Udbytte at gøre frugtbringende i dertil af Tilsynsraadet godkendte Banker eller Bankhuse i Indlandet eller Udlandet.“

§§ 11—14 give nærmere Regler om Bankens Direktion og Tilsynsraad, dens Regnskabsaflæggelse etc.

Endelig hedder det i § 15, at Bankens Overskud anvendes til Dannelsen af Reservefond, og der gives nærmere Regler desangaaende.

III. Som Retsregler specielt vedrørende Børsvæsnen maa særlig nævnes:

Anordning af 22 December 1808 om Børsens Holdelse i Kjøbenhavn.

§ 10 contains the following paragraphs:

"The Mortgage Bank undertakes three kinds of operations, and for this purpose is divided into three departments. The loans contracted by the bank shall exclusively be employed for the acquisition of bonds connected with one of the three departments of the bank. The first department comprises bonds issued by Danish credit associations, the loans of which must not be privileged beyond  $\frac{3}{8}$  of the estimated values of the mortgaged properties, and in the bonds of which the means of minors may be invested, and bonds issued by municipal credit associations in Denmark. The second department, when the Tithe Bank provided for by Act No. 100 of 15 May 1903 has been established, shall comprise bonds issued by this bank. The third department comprises bonds for which the Danish State has assumed full guarantee in conformity with the Law enacted this day in connection with the modifications of the regulations concerning the granting of State loans for the allotments of agricultural labourers.

When bonds are purchased for the first department it shall always be borne in mind that the object in view is to benefit Danish landed proprietors by raising the value of the bonds of Danish credit associations by means of the relations entertained with foreign money markets. The acquisition of such bonds ought to take place in something like equal proportion to the loan funds of the various credit associations available in the two immediately preceding terms, but this last consideration shall not however be decisive when the bonds of the so-called cottagers' credit associations are purchased. In consequence, the purchase ought to be exclusively of the bonds of the open series of the credit associations. If the bonds in force of open series of a credit association, at the expiration of the last quarter before the Mortgage Bank has informed the association of its intention to commence its purchases amounted to not less than 10 million kroner, the purchase of such bonds can only take place when a new series is opened, and then only of bonds appertaining to the latter series or to a series to be subsequently opened.

When the managing directors, with the consent of the supervising council, however, decide upon such a course, the purchase of bonds of credit associations the loan assets of open series of which at the time indicated do not amount to 10 million kroner, may also be based on the condition that a new series shall be opened, and in this case the purchase shall exclusively be effected in bonds belonging to this series or a series to be issued subsequently.

When bonds are purchased for the second department, it must be borne in mind that the object in view of this department is partly to serve as a regulator of fluctuations to which the offer of tithe bonds is calculated to bring about in the Danish money market, partly to provide the department as large a profit as possible.

In the third department the bonds in question are taken at a rate which, according to agreement between the Minister of Finance and the bank, is fixed as far as possible in such a manner as to ensure that the Mortgage Bank has neither profit nor loss by reason of the purchase.

The bonds acquired, according to the special regulations of the Ministry, either by means of a prohibitive note from the Ministry of Finance or by being deposited with this Ministry, shall be bound as guarantee for the mortgage bonds which are in force, and which consequently are guaranteed partly by these bonds and partly by the original and guarantee funds of the Mortgage Bank. Further, the Minister of Finance, on the proposition of the managing directors, decides in what proportion a series of mortgage bonds shall be used for the purchase of bonds of the three kinds mentioned.

Before the Mortgage Bank has acquired the bonds corresponding to a contracted loan, the proceeds of the loan shall be made productive in banks or banking houses in Denmark or abroad, recognised for this purpose by the supervising council.

§§ 11—15 contain detailed regulations with regard to the functions of the managing directors and the supervising council of the bank, and the mode in which the accounts of the bank are to be kept, etc.

Finally, in § 15 it is said that the surplus of the bank shall be used for the establishment of a guarantee fund, and the Article prescribes the detailed regulations bearing on this subject.

III. As legal rules specially affecting the operations of *Exchanges* must notably be mentioned:

The Ordinance of 22 December 1808 providing that the *Exchange shall be held in Copenhagen*.

Bekendtgørelse af 30 September 1858 angaaende forandrede Bestemmelser med Hensyn til Nøteringen af Coursen paa Kjøbenhavns Børs, jvf. Bekendtgørelser af 21 August 1862, 2 Januar 1873, 28 December 1874, 6 November 1880, 4 Juli 1899, 14 Maj 1906 og 23 Juli 1909.

Børs-Orden af 31 Marts 1888 (vedtagen af Grosserersocietetets Komité).

## B. Forsikringsret.

### Lov af 29 Marts 1904 om Livsforsikringsvirksomhed.

Vi Christian den Niende, af Guds Naade Konge til Danmark, o. s. v.  
Gøre vitterligt: Rigsdagen har vedtaget og Vi ved Vort Samtykke stadfæstet følgende Lov:

#### Almindelige Bestemmelser.

§ 1. Ved Livsforsikringsvirksomhed forstaas i denne Lov forretningsmæssig Overtagelse af Livsforsikring, derunder indbefattet saavel egentlige Livsforsikringer som Livrenter. Saadan Virksomhed maa, foruden af Statsanstalten for Livsforsikring, kun drives af 1. Aktieselskaber og — 2. Selskaber, grundede paa Medlemmernes gensidige Ansvar.

Forinden et Livsforsikringsselskab maa begynde sin Virksomhed, skal dertil erhverves Tilladelse fra Indenrigsministeren efter de i denne Lov givne Forskrifter.

I Tvivlstilfælde afgør Indenrigsministeren, om en Virksomhed er Livsforsikringsvirksomhed.

2. Et Selskab, som driver Livsforsikringsvirksomhed, maa ikke drive anden Virksomhed end Forsikringsvirksomhed.

#### Om Livsforsikringsaktieselskaber.

3. Størrelsen af et Livsforsikringsselskabs Aktiekapital skal være fastsat under Hensyn til Arten og Omfanget af den Virksomhed, som Selskabet tilsigter.

Den indbetalte Del af Aktiekapitalen skal for hver Aktie mindst udgøre femogtyve Procent af det paalydende Beløb og maa i intet Tilfælde være mindre end Eet Hundredetusinde Kroner. I de nu bestaaende Selskaber, i hvilke den indbetalte Del af Aktiekapitalen er mindre end anført, skal det manglende indbetales med mindst en Femtedel aarlig i de første 5 Aar efter Lovens Ikrafttræden.

Den højeste Forsikringssum, som et Livsforsikringsselskab uden Genforsikring maa overtage paa enkelt Risiko, maa ikke overstige det Beløb, der fremkommer ved til fire pCt. af den indbetalte Del af Aktiekapitalen at lægge een pro mille af Selskabets hele i Kraft varende Forsikringssum for egen Regning.

Ved Livrenteforsikringer skal ved denne Beregning Forsikringssummen regnes lig femten Gange det aarlige Livrentebeløb.

4. Aktierne skulle altid lyde paa Navn.

Saa længe fuld Indbetaling paa Aktierne ikke har fundet Sted, kan ved Transport af disse den tidligere Ejers Forpligtelse ikke bortfalde, forinden Forandringen er godkendt af Selskabets Bestyrelse.

5. Naar Aktiekapitalen ikke er fuldt indbetalt, maa ingen Aktionær være Parthaver for mere end fem pCt. af den samlede Aktiekapital.

6. Selskabets Vedtægter skulle indeholde Angivelse af: 1. Selskabets Firma; — 2. Formaalet for Selskabets Virksomhed med særlig Angivelse af, hvor vidt Selskabet agter uden Lageundersøgelse at tegne Forsikringer, der forfalde ved den forsikredes Død; — 3. den Kommune, hvor Selskabet skal have sit Sæde; — 4. Bestyrelsens Sammensætning samt Reglerne for Omfanget og Fordelingen af dens Myndighed og for Udøvelsen af dens Virksomhed; — 5. Reglerne for Revision og Decision af Regnskabet; — 6. hvorledes Indkaldelse til Generalforsamlinger skal finde Sted, og hvorledes andre Meddelelser skulle bringes til Medlemmernes Kundskab; — 7. Tidspunktet for de ordinære Generalforsamlinger samt de Emner, der hvert Aar skulle forelægges dem; — 8. Reglerne for Stemmeret i Selskabets Anliggender og for Afgørelser paa Generalforsamlinger; — 9. det højeste Beløb, som

The Publication of 30 September 1858 concerning modified regulations in regard to the *statement of the current prices* at the Exchange of Copenhagen; see the Publications of 21 August 1862, 2 January 1873, 28 December 1874, 6 November 1880, 4 July 1899, 14 May 1906 and 23 July 1909.

The *Regulations of the Exchange* of 31 March 1888 (passed by the Committee of the Wholesale Dealers' Society).

## B. Insurance law.

### Act of 29 March 1904 concerning life assurance business.

We, Christian the Ninth, of God's grace King of Denmark etc., make known: The Rigsdag has passed and We with Our consent have confirmed the following Act:

#### General provisions.

§ 1. By life assurance operations within the meaning of this Act are meant the conclusion of life assurance contracts as a matter of business, comprising both life assurance properly so-called and life annuities. Such operations, apart from the State establishment for life assurance, must only be carried on by: 1. Joint stock companies, and — 2. Societies based on the mutual responsibility of their members.

Before starting its operations a life assurance society must obtain an authorisation from the Ministry of the Interior in accordance with the provisions of this Act.

In doubtful cases, the Minister of the Interior decides whether a business is a life assurance business.

2. A society carrying on a life assurance business must not engage in any other operations than those of insurance.

#### Life assurance joint stock companies.

3. The amount of the share capital of a life assurance company shall be fixed according to the kind and extent of the operations which the company has in view.

The paid-up part of the share capital shall — in regard to each share — at least amount to twenty-five per cent. of the nominal amount, and in no case shall be less than one hundred thousand kroner. In the companies now operating in which the paid-up part of the share capital is less than the amount just stated, the difference shall be made good at the rate of not less than one fifth in each of the first five years after this Act has come into operation.

The highest amount of assurance which a life assurance company is allowed to take at its charge on any single risk without re-insuring, must not exceed the amount which arises by adding to four per cent. of the paid-up part of the share capital, one per thousand of the total amount of the company's assurances which are in force for its own account.

In the case of assurances of life annuities the amount of the assurance shall be calculated at fifteen times the annual amount of the life annuity.

4. The shares shall always be issued nominatively.

So long as the shares have not been fully paid up the liability of the previous owners cannot be displaced by the transfer of the shares until such transfer has been approved by the board of directors of the company in question.

5. In cases where the share capital has not been fully paid up, no shareholder may hold shares for more than five per cent. of the total share capital.

6. The statutes (articles of association) of the company shall contain: 1. The firm name of the company; — 2. The object of the company's operations, with a special indication as to whether the company intends to conclude assurances which become due on the death of the assured without availing itself of medical examination; — 3. The parish in which the company is going to have its seat of business; — 4. The composition of the board of directors and the regulations relative to the scope and various branches of their powers and to the exercise of their functions; — 5. The regulations relative to the audit and settlement of the company's accounts; — 6. The manner in which general meetings are to be convened, and how other communications are to be brought to the knowledge of the shareholders; — 7. The time for the ordinary general meetings and the subjects which every year shall be submitted

Selskabet uden Genforsikring skal kunne overtage paa enkelt Risiko; — 10. Reglerne for Fordeling af Aarsoverskuddet; — 11. Aktiekapitalens Størrelse; — 12. det Beløb, hvorpaa de enkelte Aktier skulle lyde; — 13. hvorvidt alle Aktier give samme Ret, eller i modsat Fald, hvor stor en Del af Aktiekapitalen der giver særlige Rettigheder, og hvilke disse ere; — 14. hvor stor Del af Aktiernes paalydende Beløb der skal indbetales kontant samt Regler for Aktionærernes Forpligtelse til at gore yderligere Indbetaling paa Aktierne.

### Om gensidige Livsforsikringsselskaber.

7. Gensidige Livsforsikringsselskaber skulle have en Garantikapital, hvis Størrelse ikke maa være mindre end et Hundrede Tusinde Kroner. Den indbetalte Del af Garantikapitalen i Forbindelse med Selskabets Sikkerhedsfond (jfr. § 17) skal til enhver Tid mindst udgøre 25 pCt. af Garantikapitalens Paalydende og ingen Sinde mindre end 50,000 Kr. I de nu bestaaende Selskaber, i hvilke den indbetalte Del af Garantikapitalen er mindre end anført, skal det manglende indbetales med mindst en Femtedel aarlig i de første 5 Aar efter Lovens Ikrafttræden.

Den højeste Forsikringssum, som Selskabet uden Genforsikring maa overtage paa enkelt Risiko, maa ikke overstige fire pCt. af Garantikapitalen med Tillæg af 1 pro mille af Selskabets hele i Kraft værende Forsikringssum for egen Regning.

Gensidige Livsforsikringsselskaber, som for 1. Januar 1904 ere stiftede uden Garantikapital, og som ved denne Lovs Ikrafttræden have en Sikkerhedsfond af mindst 100,000 Kr., skulle af Forsikringsraadet kunne fritages for Tegning af Garantikapital.

8. Medlemmer af et gensidigt Livsforsikringsselskab ere Selskabets Forsikringstagere og kun disse. Medlemmerne hæfte for Selskabets Forpligtelser i det Omfang, Vedtægterne fastsætte (jfr. § 10 Nr. 2 og § 20, 2det Stykke).

Dog kan det, naar et Selskab bliver Medlem af et andet Selskab ved Genforsikring, aftales, at det skal være fritaget for Ansvar og ikke erholde Andel i Overskud. Det samlede Beløb af saadanne Genforsikringer maa dog ikke overstige 10 pCt. af det overtagende Selskabs samlede Forsikringssum, hvorved Livrenteforsikringer beregnes paa den i § 3 angivne Maade.

9. Et gensidigt Selskabs Firma skal indeholde Ordet «Gensidig».

10. Vedtægterne for et gensidigt Selskab skulle indeholde Angivelse af: 1. hvad der i § 6 Nr. 1 til 10 er foreskrevet for Aktieselskaber; — 2. Reglerne for Medlemmernes Ansvar indbyrdes og over for Trediemand, jfr. § 20, 2det Stykke; 3. Garantikapitalens Størrelse; — 4. hvor stor Del af den tegnede Garantikapital der skal indbetales kontant, og Reglerne for Garanternes Forpligtelse til at gore yderligere Indbetaling paa Garantikapitalen; — 5. Reglerne for Garantikapitalens Forrentning og Tilbagebetaling, for saa vidt saadan skal kunne finde Sted.

### Om Tilladelse til at drive Livsforsikringsvirksomhed.

11. Andragende om Tilladelse til at drive Livsforsikringsvirksomhed stiles til Indenrigsministeren og indsendes til det i § 52 omhandlede Forsikringsraad.

Andragendet skal være bilagt med: 1. Selskabets Vedtægter; — 2. Angivelse af Grundlaget for Beregningen af Forsikringspræmierne og Præmiereserven; — 3. Angivelse af de Forsikringsformer, som Selskabet agter at anvende; — 4. Angivelse af Selskabets almindelige Forsikringsbetingelser; — 5. Formularer til de Erklæringer, som skulle afgives af den undersøgende Læge og af den forsikringssøgende selv angaaende dennes Helbredstilstand; — 6. Angivelse af Reglerne for Tilbagekøb af Forsikringer, for Følgerne af Undladelse af Præmiebetalingen og for Laan mod Pant i Selskabets egne Forsikringer; — 7. Angivelse af de Regler, efter hvilke Selskabet kan overtage Genforsikring; — 8. Angivelse af Reglerne for Beregning og Fordeling af Overskud til Forsikringstagere; — 9. Oplysning om, hvorvidt Selskabet agter at drive Livsforsikringsvirksomhed i Udlandet, samt Angivelse af

to them; — 8. The regulations as to the right of voting on the affairs of the company and as to the resolutions passed at the general meetings; — 9. The highest amount which the company shall be permitted to take at its charge on a single risk without re-insuring; — 10. The regulations relative to the distribution of the annual surplus; — 11. The amount of the share capital; — 12. The nominal amount of each share; — 13. Whether all the shares give the same rights, or, in the contrary case, how large a part of the share capital confers special rights, and what these rights are; — 14. What part of the nominal amount of the shares must be paid up in cash and the regulations as to the obligation of the shareholders to make further payments on the shares.

### **Mutual life assurance societies.**

7. Mutual life assurance societies shall have a guarantee capital the amount of which must not be less than one hundred thousand kroner. The paid-up part of the guarantee capital in connection with a society's guarantee fund (see § 17) shall at all times amount to at least 25 per cent. of the nominal amount of the guarantee capital and never be less than 50000 kroner. In the case of societies now operating in which the paid-up part of the guarantee capital is less than the amount which has just been stated, the difference shall be made good at the rate of not less than one fifth per annum in the first five years after this Act has come into force.

The highest amount of assurance which a society is allowed to take at its charge on a single risk without re-insuring, must not exceed four per cent. of its guarantee capital with an addition of one per thousand of the total amount of the society's assurances which are in force for its own account.

Mutual life assurance societies established without guarantee capital before 1 January 1904, which, at the time when this Act comes into force, have a guarantee fund of at least 100 000 kroner, may be exempted by the assurance council from the obligation of subscribing a guarantee capital.

8. Only the members of a mutual life assurance society may be assured by such society. The members are liable for the obligations of the society to the extent stipulated in the statutes (articles of association) of the society (see § 10 No. 2 and § 20, 2nd paragraph).

In the case of a society becoming through re-insurance a member of another society, it may, however, be agreed that the first mentioned society shall assume no liability and obtain no part of the surplus. The total amount of such re-insurances, however, must not exceed 10 per cent. of the total amount of assurances of the re-insuring society, and the assurances of life annuities are in such cases calculated as indicated in § 3.

9. The firm name of a mutual society shall contain the word "mutual".

10. The statutes (articles of association) of a mutual society shall contain: 1. The matters prescribed in § 6 Nos. 1—10 concerning joint stock companies; — 2. The regulations regarding the mutual obligations of the members and their obligations towards third persons; see § 20, 2nd paragraph; — 3. The amount of the guarantee capital; — 4. What part of the subscribed guarantee capital must be paid in cash, and the regulations as to the obligations of the subscribers to make further payments to the guarantee capital; — 5. The regulations as to the interest and repayment of the guarantee capital, when such re-payment is to take place.

### **The authorisation to do life assurance business.**

11. Applications for authorisation to do life assurance business are addressed to the Minister of the Interior and sent to the assurance council dealt with in § 52.

Such applications shall be accompanied by: 1. The statutes (articles of association) of the company (society); — 2. An indication of the basis of the calculation of the assurance premiums and the premium reserve; — 3. An indication of the various kinds of assurance to which the company (society) proposes to extend its operations; — 4. An indication of the general terms of assurance of the company (society); — 5. The forms of declaration to be sent to the company (society) by the examining doctor and by the assured himself regarding the state of his health; — 6. An indication of the regulations relative to the repurchase of assurances, the consequences of omitting to pay premiums, and loans against pledges of the company's (society's) own assurances; — 7. An indication of the regulations according to which the company (society) may undertake re-insurances; — 8. An indication of the regula-

de Beregningsgrundlag og Forsikringsbetingelser, som skulle anvendes for den udenlandske Forsikringsvirksomhed.

Samtlige ovennævnte Bilag blive at indsende i to Eksemplarer.

12. Forsikringsraadet har at gennemgaa det i foregaaende Paragraf nævnte Andragende med Bilag og kan, om det anses fornødent, forlange yderligere Oplysninger af Selskabet.

Finder Forsikringsraadet, at Selskabets Grundlag for Virksomheden er i Overensstemmelse med den gældende Lovgivning og maa antages at ville yde Forsikringstagerne betryggende Sikkerhed, afgiver det snarest muligt Indstilling til Indenrigsministeren om, at Tilladelse til at drive Livsforsikringsvirksomhed meddeles Selskabet.

Finder Forsikringsraadet, at Tilladelsen bør nægtes, skal der uopholdeligt gives Selskabet Meddelelse derom, og endelig Afgørelse af Andragendet maa da ikke finde Sted, forinden der er givet Selskabet Lejlighed til yderligere at udtale sig.

Naar Tilladelse meddeles, skal det ske uden Tidsbegrænsning. Tilladelse kan ikke nægtes af den Grund, at der ikke antages at være Trang til Selskabet.

13. Beslutninger om Forandring i nogen af de Bestemmelser, paa Grundlag af hvilke et Selskab har faaet Tilladelse til at drive Livsforsikringsvirksomhed, kunne ikke træde i Kraft, forinden Indenrigsministeren har meddelt Tilladelse dertil i Overensstemmelse med de i §§ 11 og 12 givne Regler.

14. Ethvert Livsforsikringsselskab skal registreres i Overensstemmelse med Reglerne i Lov af 1ste Marts 1889 om Handelsregistre, Firma og Prokura, saaledes at bemeldte Lovs § 33 e. anvendes paa alle gensidige Livsforsikringsselskaber. Registreringen kan ikke ske, før Selskabet har faaet Tilladelse til at drive sin Virksomhed. Først efter at Registrering har fundet Sted, kan Selskabet begynde sin Virksomhed; efter at Virksomheden er begyndt, bliver Anmeldelse at foretage til Handelsregistret angaaende Indtrædelsen af saadanne Forhold, som ommeldes i fornævnte Lovs § 21.

### Om Forsikringsfond og Sikkerhedsfond.

15. Ethvert Livsforsikringsselskab skal i sin Aarsbalance under Passiva særskilt optage et Forsikringsfond, bestaaende af: — 1. Erstatningsreserven, der omfatter saadanne Forsikringsbeløb, som ere anmeldte eller forfaldne til Udbetaling, men endnu ikke ere udbetalte; — 2. Præmiereserven, der omfatter den samlede Værdi af alle de løbende Forsikringer. Præmiereserven skal mindst udgøre et Beløb saa stort som Forskellen mellem Kapitalværdien af Selskabets i Henhold til samtlige løbende Livsforsikringskontrakter overtagne Forpligtelser og Kapitalværdien af de Nettopræmier, som Forsikringstagerne maatte have at erlægge i Fremtiden. Ved Beregningen af disse Kapitalværdier skulle de Beregningsgrundlag anvendes, som ere gældende for Selskabet paa det Tidspunkt, for hvilket Aarsbalancen opgøres. Ved Nettopræmie forstaas den Del af Forsikringspræmien, som ved Forsikringskontraktens Indgaaelse efter de da gældende Grundlag for Præmieberegningen netop svarede til den overtagne Risiko.

Har et Selskab afgivet en Forsikring i Genforsikring til et andet Selskab, er det ved Fastsættelsen af Forsikringsfondet ikke forpligtet til at medregne det genforsikrede Beløb, saafremt det Selskab, der har overtaget Genforsikringen, er et indenlandsk Selskab og i Henhold til denne Lov har Tilladelse til at drive Livsforsikring samt selv er pligtigt at opføre det nødvendige Beløb i sit Forsikringsfond, eller der af det overtagende Selskab er stillet en af Forsikringsraadet godkendt Sikkerhed for Præmiereserven. For Genforsikringer, der hidrøre fra Udlandet, kan Forsikringsraadet tillade saadanne Afgivelser fra nærværende Paragrafs Bestemmelser, som skønnes tilstrækkeligt betryggende.

Overtages en Forsikring af to eller flere indenlandske Selskaber, som i Henhold til denne Lov have Tilladelse til at drive Livsforsikringsvirksomhed, saaledes at de hæfte en for alle og alle for en, behøver hvert enkelt Selskab ved Fastsættelsen



tions concerning the calculation and distribution of the surplus to the assured; — 9. Information as to whether the company (society) intends to carry on life assurance operations in foreign countries, and an indication of the basis of calculation and terms of assurance to be applied to foreign assurance operations.

Two copies shall be sent of each of the enclosures mentioned.

12. The assurance council shall examine the application and enclosures mentioned in the preceding article and may, if it is considered necessary, ask the company (society) for further information.

If the assurance council is of opinion that the basis of the company's (society's) business is in accordance with the laws now in force, and may be considered as giving the assured satisfactory security, the council shall as soon as possible inform the Minister of the Interior that the company in question is authorised to do life assurance business.

If the assurance council is of opinion that authorisation ought to be refused, the company shall at once be informed to this effect, and a final decision regarding the application in such case must not be given until the company (society) in question has been given a further opportunity to make its observations on the matter.

When authorisation is given, it shall be for an unlimited period. Authorisation cannot be refused for the reason that the company (society) is not considered to be necessary.

13. Decisions concerning modifications of any of the regulations on the basis of which a company (society) has been authorised to do life assurance business, cannot come into force until the Minister of the Interior has given his permission to this effect according to the rules prescribed in §§ 11 and 12.

14. Every life assurance company (society) shall be registered in accordance with the provisions of the Act of 1 March 1889 concerning commercial registers, firms and proxies, to the effect that § 33c of the said Act applies to all mutual life assurance societies. The registration of a company cannot take place until the company (society) has been authorised to undertake its operations. A company (society) cannot commence its operations until the registration in the commercial register has been effected; when the operations of a company (society) have been commenced, a declaration must be made in the commercial register regarding the occurrence of such circumstances as are mentioned in § 21 of the said Act.

### **Assurance fund and guarantee fund.**

15. Every life assurance company (society) in its balance-sheet on the debit side shall have a special assurance fund consisting of: 1. The reserve of re-imbursement, comprising such assurance amounts as have been declared or are due for payment, but have not yet been paid; — 2. The premium reserve, comprising the total value of all the current assurances. The premium reserve shall be at least equal to the amount of the difference between the capital value of the company's (society's) liabilities assumed in accordance with all the actual life assurance contracts and the capital value of the net premiums which the persons assured may have to pay in future. When these capital values are calculated, those bases of calculation shall be applied which are used by the company (society) at the time when the balance-sheet is drawn up. By net premium is meant that part of the assurance premium which, when the contract of assurance was concluded, precisely corresponded with the risk undertaken on the basis of the calculation of premiums then applicable.

If a company (society) has ceded an assurance in re-insurance to another company (society), it is not compelled to include the amount re-insured when the assurance fund is fixed, provided the company (society) which has taken the risk of the re-insurance is a Danish company (society) which is authorised to do life assurance business in accordance with this Act and which is itself obliged to include the necessary amount in its assurance fund, or the re-insuring company (society) has given a security for the premium reserve which is recognised by the assurance council. In regard to re-insurances originating from abroad, the assurance council may allow such deviations from the provisions of the present Article as in the opinion of the council afford sufficient security.

If an assurance is undertaken by two or more Danish companies which are authorised to do life assurance business in accordance with this Act, to the effect that they are jointly and severally liable, each individual company, when fixing

af sit Forsikringsfond kun at medregne den Del af Forsikringen, som det selv skal overtage ifølge Aftalen med de øvrige Selskaber.

16. Ændres det for Selskabet gældende Grundlag for Præmiereservens Beregning saaledes, at Selskabet derved bliver pligtigt for ældre Forsikringer at beregne en højere Præmiereserve end efter det hidtil gældende Grundlag, kan Forsikringsraadet indrømme Selskabet en Frist til Opfyldelsen af denne Pligt, saaledes at Præmiereserven i en vis Tid, der ikke maa overskride femten Aar, kan opføres med et mindre Beløb, men Forskellen skal aftage for hvert Aar, overensstemmende med en af Forsikringsraadet godkendt Plan.

17. Af et Livsforsikringsselskabs Aarsoverskud skal der ske Henlæggelse til et Sikkerhedsfond efter de nedenfor angivne Regler.

Saalænge Sikkerhedsfondet ikke har naaet det Beløb, som fremkommer ved til to og en halv pCt. af Forsikringsfondet at lægge en halv pCt. af det samlede Beløb af de Forsikringer, for hvilke Selskabet ifølge § 15 er pligtigt at gøre Henlæggelse til bemeldte Fond, Livrenteforsikringer beregnede paa den i § 3 angivne Maade, skal hele Aarsoverskuddet, efter at Tab fra foregaaende Aar ere dækkede, henlægges til Sikkerhedsfondet. Dog er Selskabet berettiget til af Overskuddet eller af dets Rest at uddele et Beløb, der ikke maa overstige fem pCt. af den indbetalte Del af Aktie- eller Garantikapitalen, som Rente til Aktionærer eller Garanter eller som Bonus til Forsikringstagere.

Har Sikkerhedsfondet naaet det foran nævnte Beløb, men dog ikke det dobbelte af dette Beløb, skal Henlæggelsen mindst være en Tiendedel af Aarsoverskuddet efter Fradrag fra dette af Tab fra foregaaende Aar og af det ovenfor nævnte Beløb paa indtil fem pCt. af den indbetalte Kapital.

Beslutninger om at formindske Sikkerhedsfondet under det foran fastsatte Maksimum kunne kun gyldigt ske med Forsikringsraadets Samtykke, medmindre saadan Formindskelse nødvendiggores for at dække Tab, som ikke have kunnet bæres af Aarsoverskuddet.

Saafermt et Livsforsikringsselskab har anbragt nogle af de til Aktiekapitalen eller, hvis Selskabet er gensidigt, til Garantikapitalen svarende Midler efter Reglerne i § 18, og de paagældende Midler ere paategnede paa den i § 20 foreskrevne Maade, er Selskabet berettiget til ved Anvendelsen af de ovenfor givne Forskrifter at betragte saadanne Beløb, som om de vare henlagte til Sikkerhedsfondet, saaledes at de foreskrevne Henlæggelser til dette Fond kunne afpasses i Forhold hertil.

18. De til Dækning af Forsikringsfondet afsatte Midler skulle anbringes paa følgende Maade: 1. i Obligationer, der ere udstedte af, eller for hvilke en vis Rente er garanteret af den danske Stat; — 2. i saadanne Kreditforeningsobligationer, i hvilke umyndiges Midler ifølge de derom gældende Regler lovligt kunne anbringes; — 3. i Indlaansbeviser fra danske Banker eller Sparekasser; — 4. i Obligationer, udstedte eller garanterede af danske Kommuner; — 5. i Laan, sikret ved Pant i fast Ejendom indtil Halvdelen af dens ved den sidste i Henhold til Lov af 19 Marts 1869 eller Lov af 15. Maj 1903 om Ejendomsskyld foretagne Vurdering fastsatte Værdi eller — for visse Arter af Ejendomme efter Forsikringsraadets nærmere Forskrift — indtil to Trediedele af nævnte Vurderingssum; — 6. i Laan mod Pant i Selskabets egne Forsikringer indtil deres Genkøbsværdi; — 7. i Laan mod Sikkerhed, som maa anses for lige saa betryggende som de under Nr. 5 og 6 nævnte, og i Værdipapirer, som efter deres Art og den Sikkerhed, de frembyde, kunne stilles i Klasse med de under Numrene 1—4 nævnte; — 8. i fast Ejendom, som Selskabet i Egenskab af ufyldstgjort Panthaver har maattet overtage, dog kun i højst 2 Aar efter Overtagelsen og ikke med større Beløb end Laanets Restgæld ved Overtagelsen, samt i fast Ejendom, som Selskabet ejer, og hvori det har sit Hovedkontor, et saadant Beløb, som Forsikringsraadet finder passende.

19. De ved Selskabets Stiftelse og inden Udløbet af de to første Regnskabsaar anvendte Stiftelses- og Organisationsomkostninger kunne opføres i Selskabets Aarsbalance som et særligt Aktiv; dog skulle de afskrives i Løbet af de ti første

its assurance fund, need only include that part of the assurance which it has itself taken at its charge according to the agreement with the other companies concerned.

16. If the basis employed by the company (society) in regard to the calculation of its premium reserve is altered in such a manner that the company (society), owing to such alteration, becomes bound to calculate a higher premium reserve for older assurances than has been customary according to the basis previously in operation, the assurance council may grant to the company (society) a period of delay for carrying out this obligation, to the effect that the premium reserve during a certain period, which must not exceed fifteen years, may be calculated at a smaller amount, but the difference shall decrease each year in accordance with a scheme approved by the assurance council.

17. Out of the annual surplus of a life assurance company (society) a transfer shall be made for a guarantee fund in accordance with the rules given below.

So long as the guarantee fund has not reached the amount resulting when to two and a half per cent. of the assurance fund is added one half per cent. of the total amount of those assurances for which the company (society) is bound in accordance with § 15 to make a transfer to the said fund, assurances of life annuities being calculated in the manner indicated in § 3, the entire annual surplus, when the losses incurred in the previous year have been paid, shall be transferred to the guarantee fund. The company (society), however, out of the surplus or the remainder of it, is entitled to distribute an amount not exceeding five per cent. of the paid-up part of the share or guarantee capital by way of dividends to shareholders or subscribers or as bonuses to the persons assured.

If the guarantee fund has reached the above mentioned amount, but not double this amount, the transfer shall amount to at least one tenth of the annual surplus after the deduction of losses of previous years and of the amount not exceeding five per cent. of the paid-up capital above mentioned.

Decisions having in view the diminution of the guarantee fund below the aforesaid fixed maximum can legally take place only with the consent of the assurance council, unless the diminution has become necessary in order to pay the losses which it has been impossible to pay out of the annual surplus.

If a life assurance company (society) has, in accordance with the rules of § 18, employed any of the investments appertaining to the share capital, or, where the society is based on mutuality, to the guarantee capital, and if the securities in question have been marked in the manner indicated in § 20, the company (society), in the application of the regulations above prescribed is entitled to consider such amounts as having been transferred to the guarantee fund, to the effect that the transfers prescribed for this fund may be calculated accordingly.

18. The amounts put aside as cover for the assurance fund shall be invested in the following manner: 1. In bonds issued, or for which a certain interest is guaranteed, by the Danish State; — 2. In bonds of credit associations in which the means of minors may be legally invested according to the rules in force on this subject; — 3. In deposit certificates of Danish banks and savings banks; — 4. In bonds issued or guaranteed by Danish municipalities; — 5. In loans guaranteed by mortgages of immovables, up to one half of the value of the property in question fixed by the last estimate made in accordance with the Act of 19 March 1869 or the Act of 15 May 1903, concerning property tax, or— in the case of certain kinds of property according to the special provisions of the assurance council — up to two thirds of the aforesaid estimated value; — 6. In loans against pledges of the company's (society's) own assurances up to their repurchase value; — 7. In loans upon securities which are considered as safe as those mentioned under Nos. 5 and 6, and in negotiable securities which in reference to their nature and the measure of security they offer may be classified with those mentioned under Nos. 1—4; — 8. In immovables which the company (society), in its capacity as an unsatisfied mortgagee has been obliged to take over, only, however, for two years after the company (society) has taken over the property and for an amount not exceeding the unpaid portion of the mortgage debt at the time when the company (society) takes over the property, and in immovables belonging to the company (society) in which it has its chief office, for an amount considered suitable by the assurance council.

19. The expenses incurred in connection with the formation of the company (society) and the expenses of establishment and organisation incurred within the two first years of its operations, may be brought into the company's (society's) annual

Regnskabsaar, saaledes at ved Udlobet af det sjette Aar mindst en Femtedel skal være afskrevet og ved Udgangen af hvert følgende Aar yderligere mindst en Femtedel for hvert Aar.

Af de Omkostninger, som i Lobet af et Regnskabsaar ere medgaaede til Erhvervelse af ny Forsikringer (Anskaffelsesomkostninger), kunne indtil fem Sjettede opføres i Aarsbalancen som Aktiv. Uanset Forskrifterne i § 18, dog med den af § 25, 3die Stykke, følgende Indskrænkning, kan der heraf som Dækning for en tilsvarende Del af Forsikringsfondet opføres et Beløb, der ikke maa udgøre mere end en og en halv pCt. af den i det paagældende Aar erhvervede Livsforsikringssum, som Selskabet har beholdt for egen Regning, Livrentebeløbene ikke medregnede, medens Resten vil være at opføre som Dækning for en tilsvarende Del af den indbetalte Aktie- eller Garantikapital, for saa vidt denne ikke er anvendt paa anden Maade. De i Henhold til foranstaaende Bestemmelser som Aktiv opførte Anskaffelsesomkostninger skulle dog, hvad enten de staa som Dækning for Forsikringsfondet eller for indbetalt Aktie- eller Garantikapital, afskrives i Lobet af de fem følgende Regnskabsaar, mindst med en Femtedel aarlig.

Forinden Stiftelses- og Organisationsomkostningerne ere fuldt afskrevne, maa der af Aarsoverskuddet højst uddeles 5 pCt. af den indbetalte Aktie- eller Garantikapital som Rente til Aktionærer eller Garanter eller som Bonus til Forsikrings-tagere.

20. For Livsforsikringsaktieselskabers Vedkommende skulle de Værdipapirer, hvori Forsikringsfondets Midler anbringes, forsynes med Selskabets Paategning om, at de skulle tjene til Dækning af Forsikringsfondet, hvorved de anses som givne i Haandpant til Sikkerhed for Forsikringstagernes Krav i Henhold til Forsikringskontrakterne. En af Forsikringsraadet udnævnt Tillidsmand har at paase, at ethvert Værdipapir, hvori Forsikringsfondet efter Aarsregnskabets Opgørelse anbringes, bliver forsynet med fornævnte Paategning, samt selv at underskrive denne. Han skal derhos paase, at de paategnede Værdipapirer opbevares særskilt. Pantsættelsen ophører ved Tillidsmandens Paategning paa vedkommende Værdipapir om, at den er bortfalden, hvilken Paategning kun kan meddeles, efter at dertil er erholdt Samtykke fra Forsikringsraadet. Dog kan Tillidsmanden uden Forsikringsraadets Samtykke give den nævnte Paategning, naar et pantsat Værdipapir ønskes ombyttet med et andet til mindst samme Beløb, mod at det ny Værdipapir straks forsynes med Selskabets og hans egen Paategning om Pantsættelse overensstemmende med Reglerne i nærværende Paragraf. Tillidsmanden skal uopholdeligt gøre Indberetning til Forsikringsraadet om ethvert Forhold ved Pantsættelsen eller Opbevaringen af Værdipapirerne, som han anser for urigtigt.

For gensidige Livsforsikringsselskabers Vedkommende finde de i foranstaaende Stykke angivne Regler tilsvarende Anvendelse. For Forpligtelser, som, uden at være Forsikringskrav, af saadanne Selskaber paadrages over for Forsikringstagere eller Trediemænd, hæfter Selskabets Medlemmer inden for de i Selskabets Vedtægter fastsatte Grænser for det gensidige Ansvar, dog for de i Lov om Konkurs m. m. af 25. Marts 1872 § 31 og 33 omhandlede Krav ubetinget solidariske.

De i nærværende Paragraf givne Bestemmelser komme ikke til Anvendelse paa de i § 18 Nr. 6 omhandlede Laan mod Pant i Forsikringer.

21. Driver Selskabet Livsforsikringsvirksomhed i Udlandet, kan Indenrigsministeren efter Forsikringsraadets Indstilling for de udenlandske Forsikringer tillade Afgivelser fra Bestemmelserne i §§ 18, 19 og 20.

22. Til Udførelse af de for et Livsforsikringsselskabs Virksomhed nødvendige forsikringstekniske Beregninger og Undersøgelser skal der ved Selskabet være ansat en Aktuar. Som saadan kan kun antages en af Forsikringsraadet godkendt Person.

### Om Tilsyn med Livsforsikringsselskaber.

23. Ethvert Livsforsikringsselskab skal inden 8 Maaneder efter hvert Regnskabsaars Udlob indsende til Forsikringsraadet: 1. Et af Bestyrelsen underskrevet

balance-sheet as a special asset; they shall, however, be discharged in the course of the first ten years of the company's (society's) operations, in such a manner that at the expiration of the sixth year at least one fifth of the expenses shall have been discharged, and at the expiration of each succeeding year at least one fifth every year.

Of the expenses which in the course of a financial year have been incurred in relation to the acquisition of fresh assurances (cost of acquisition), up to five sixths may be brought into the balance-sheet as assets. Of this, without having regard to the provisions of § 18, but subject to the restriction resulting from the third paragraph of § 25, an amount not exceeding one and a half per cent. of the life assurance amount acquired during the year in question which the company (society) has kept for its own account, the life annuities not included, may be brought in as security for a corresponding part of the assurance fund, whereas the remainder must be brought in as security for a corresponding part of the paid-up share or guarantee capital, provided it has not been employed in some other manner. The cost of acquisition brought into the balance-sheet as an asset, according to the aforesaid provisions, shall, however, whether it has been brought in as security for the assurance fund or the paid-up share and guarantee capital, be discharged in the course of the five following financial years at the rate of at least one fifth per annum.

Until the expenses incurred in relation to the establishment and organisation of the company (society) have been fully discharged, not more than 5 per cent. of the paid-up share and guarantee capital may be distributed out of the annual surplus as dividends to shareholders or subscribers or as bonuses to the assured.

20. So far as joint stock companies doing life assurance business are concerned, the securities in which the assets of the assurance fund are invested shall be marked with a note stating that they serve as security for the assurance fund, and they are considered thereby as having been given in pledge as security for the claims of the persons assured in accordance with the assurance contracts. A confidential man, nominated by the assurance council, must see that each security in which the assurance fund, after the settlement of the annual accounts, is invested, is furnished with the aforesaid note, which he shall himself sign. He shall also see that the securities bearing such notes are kept separately. The pledge ceases when the confidential man writes on the security in question that the pledge has become extinct, a statement which can only be made with the consent of the assurance council. The confidential man may, however, make the said statement without the consent of the assurance council when it is desired that a pledged security shall be exchanged for another of at least the same amount, on condition that this fresh security shall at once be provided with the company's and his own note concerning the pledge, in accordance with the provisions of the present Article. The confidential man shall forthwith report to the assurance council any circumstance in relation to the pledge or the keeping of the securities which he considers incorrect.

In so far as mutual life assurance societies are concerned, the rules given in the preceding paragraph are applied in a corresponding manner. For obligations which, without being assurance claims, are incurred by such societies as regards the assured or third persons, the members of the society are liable within the limits fixed by the statutes (articles of association) of the society for their mutual liability, but they are unconditionally and jointly liable in respect of such claims as are dealt with in §§ 31 and 33 of the Bankruptcy Act of 25 March 1872.

The provisions of the present Article do not apply to such loans against pledges on assurances as are dealt with in § 18 No. 6.

21. If the company (society) in question carries on life assurance operations in foreign countries, the Minister of the Interior, on the proposition of the assurance council, may, in regard to foreign assurances, authorise deviations from the provisions of §§ 18, 19 and 20.

22. To carry out the technical calculations and inquiries necessary for the operations of a life assurance company (society), the company (society) shall employ an actuary. A person can only be employed as an actuary if he has been approved by the assurance council.

### **The supervision of life assurance companies and societies.**

23. Every life assurance company or society shall, within eight months after the expiration of every financial year, send to the assurance council: 1. A balance-

Aarsregnskab, der skal indeholde saavel Vindings- og Tabs-Konto for det forløbne Regnskabsaar som Aarsbalancen ved samme Regnskabsaars Udlob og være ledsaget af Revisionens Udtalelser; — 2. En af Bestyrelsen underskreven fuldstændig Oversigt over Selskabets Virksomhed i Aarets Lob, bilagt med den af Bestyrelsen afgivne Aarsberetning; — 3. En Beretning fra Selskabets Aktuar om Opgørelsen af Præmiereserven.

Ved Opgørelsen af Aarsregnskabet opfores Værdipapirer, der noteres paa Københavns Børs, efter en Gennemsnitsberegning af de paa Afslutningsdagen sidst noterede Køberkurser og Kurserne paa de tilsvarende Dage i de nærmest forudgaaende 9 Aar, dog ikke over pari. Andre Værdipapirer optages i Regnskabet til den Pris, for hvilken de ere erhvervede, medmindre Værdien maa antages at være lavere.

Forsikringsraadet kan fastsætte Skemaer, hvorefter de fornævnte Beretninger og Regnskaber skulle afgives.

Forsikringsraadet kan kræve de yderligere Oplysninger, som det i hvert enkelt Tilfælde maatte finde fornødne.

Selskaber, der drive anden Forsikringsvirksomhed sammen med Livsforsikring, skulle opføre særskilt Aarsregnskab for Livsforsikringsafdelingen.

24. Ethvert Livsforsikringsselskab er forpligtet til naar som helst i Forretningstiden og paa Selskabets Kontor at tilstede Forsikringsraadet eller Medlemmer deraf tilligemed deres Medhjælpere Adgang til at efterse Selskabets samtlige Bøger og Bilag.

Ethvert Livsforsikringsselskab skal mindst en Gang hvert 7de Aar underkastes en indgaaende Undersøgelse af Forsikringsraadet.

Forsikringsraadet skal bevare fuldstændig Tavshed med Hensyn til, hvad det erfarer om Enkeltnands personlige og økonomiske Forhold. Dette gælder ogsaa om Forsikringsraadets Medhjælpere.

25. Holder et Selskab sig ikke nærværende Lov eller sine Vedtægter efterrettelig, eller afviger det fra det for Selskabets Virksomhed gældende Grundlag, eller findes dette Grundlag eller den Maade, hvorpaa Selskabets Midler ere anbragte, ikke betryggende, eller viser det sig, at de til Dækning af Forsikringsfondet henlagte Midler ikke ere tilstrækkelige, kan Forsikringsraadet foreskrive Selskabet inden en given Frist at foretage de Foranstaltninger, som findes fornødne, deriblandt at indkalde en saa stor Del af den ikke indbetalte Selskabskapital, som udkræves til Dækning af bemeldte Fond.

Saafernt de foreskrevne Foranstaltninger ikke ere trufne inden den givne Frist, og Undladelsen af at foretage dem skønnes at medføre Fare for Forsikringstagerne, kan Selskabet sættes under Administration efter nærværende Lov.

Viser det sig, at de til Dækning af Forsikringsfondet henlagte Midler, endog naar fuld Indbetaling af Selskabskapitalen er sket eller Indkaldelsesfristen er udløbet, ikke ere tilstrækkelige, og at det manglende Beløb overstiger to pCt. af den samlede Livsforsikringssum, Selskabet har beholdt for egen Regning, Livrente-forsikringer ikke medregnede, skal Selskabet uopholdelig sættes under Administration. Ved denne Beregning maa de Anskaffelsesomkostninger, der i Henhold til § 19 maatte være opførte som Aktiv, ikke medregnes i de til Dækning af Forsikringsfondet henlagte Midler.

Ligeledes skal Administration uopholdelig indtræde, saa snart et Livsforsikringsaktieselskab tages under Konkursbehandling.

Et gensidigt Livsforsikringsselskab, der er taget under Konkursbehandling, kan ikke sættes under Administration, saa længe Konkursen vedvarer, men under Konkursbehandlingen komme for Forsikringskravenes Vedkommende de om Administration af Livsforsikringsaktieselskaber i nærværende Lov givne Bestemmelser til Anvendelse med de af Forholdets Natur følgende Lempelser.

### Om Administration.

26. Finder Forsikringsraadet, at et Livsforsikringsselskab i Henhold til de i § 25 givne Bestemmelser bør sættes under Administration, har det straks paa Sel-

sheet signed by the managing directors, which shall contain both an account of the gains and losses of the expired financial year and the annual balance at the expiration of the same financial year, and be accompanied by a declaration of the auditors; — 2. A complete account of the operations of the company or society in the course of the year; such account shall be signed by the directors and accompany the annual report made by the directors; — 3. A report from the actuary of the company or society concerning the estimate of the premium reserve.

When the balance-sheet is drawn up, securities quoted on the Exchange of Copenhagen are valued on the basis of an average calculation of the last sale prices quoted on the concluding day and the prices quoted on the corresponding days of the nine previous years, but not above par. Other securities are valued in the balance-sheet according to the price at which they have been acquired, unless their price is reputed to be lower.

The assurance council may fix tables in accordance with which the said calculations and accounts are to be made out.

The assurance council may ask for such further information as it considers necessary in each particular case.

Companies and societies doing other insurance business beside life assurance, shall draw up a separate balance-sheet for the life assurance section.

**24.** Every life assurance company (society) is bound at any time during the hours of business and at the office of the company (society) in question, to allow the assurance council or its members, together with their assistants, to examine all the books and documents of the company (society).

The assurance council shall at least once every seven years subject every life assurance company or society to a thorough examination.

The assurance council shall keep strictly silent with regard to what it learns concerning the personal and economic circumstances of particular individuals. This also applies in regard to the assistants of the assurance council.

**25.** If a company or society does not comply with the present Act or its own statutes (articles of association) or if it departs from the basis applicable to the operations of the company or society in question, or if this basis, or the manner in which the means of the company or society are employed, are not found to afford sufficient security, or if it is established that the sums deposited as security for the assurance fund are not sufficient, the assurance council may require the company or society within a certain period to make such arrangements as are found necessary, and in particular to call up as large a part of the capital of the company or society which has not been paid up, as is required to provide security for the said fund.

If the required arrangements are not made within the given period, and the omission to make them is considered to cause danger to the persons assured, the company or society in question may be subjected to administration in accordance with the present Act.

If it is established that the sums deposited as security for the assurance fund, even when the capital of the company or society has been paid up in its entirety, or the period fixed for such payment has expired, are not sufficient, and that the amount which is necessary exceeds two per cent. of the total amount of the life assurances which the company or society has retained for its own account, the assurances of life annuities not being included, the company or society shall forthwith be subjected to administration. In this calculation the cost of acquisition which, according to § 19, may have been brought in as an asset, must not be included in the sums deposited as security for the assurance fund.

Administration shall also forthwith commence as soon as a life assurance joint stock company is subjected to bankruptcy proceedings.

A mutual life assurance society which has been subjected to bankruptcy proceedings cannot be placed under administration as long as the bankruptcy lasts, but during the bankruptcy, in so far as the assurance claims are concerned, the provisions of this Act in regard to the administration of life assurance joint stock companies apply, subject to the modifications resulting from the nature of the case in question.

### Administration.

**26.** If the assurance council is of opinion that a life assurance company or society ought, in accordance with the provisions of § 25, to be subjected to administration,



skabets Bekostning at lade Bekendtgørelse derom indrykke i de Aviser, hvori Konkursdekreter offentliggøres, samt at foretage Anmeldelse til Handelsregistret om Administrationens Indtræden. Forsikringsraadet har derhos at tage i Besiddelse de til Forsikringsfondet henlagte Værdipapirer samt saadanne til Sikkerhedsfondet hørende, der maatte være paategnede paa den i § 20 foreskrevne Maade. I Livsforsikringsaktieselskaber skulle samtlige disse Midler udgøre en særlig Masse, der udelukkende skal tjene til Dækning af de livsforsikredes Krav.

Er et Livsforsikringsaktieselskab kommet under Konkurs, sker Oversendelsen af de fornævnte Midler til Forsikringsraadet af Skifteretten straks efter Konkursens Begyndelse.

De enkelte livsforsikrede kunne ikke gøre noget Krav gældende mod Selskabet, hvorimod Forsikringsraadet paa Administrationsboets Vegne hos Selskabet kan fordrø, hvad der ifølge den i § 29 omhandlede Beregning maatte mangle i Forsikringsfondet samt i et Sikkerhedsfond saa stort som det i § 17, 3die Stykke, angivne højeste Beløb.

Kommer et Livsforsikringsaktieselskab under Konkurs, efter at Administration er begyndt, bliver dette uden Indflydelse paa Administrationsboet; for gensidige Livsforsikringsselskabers Vedkommende ophører derimod Administrationen uopholdelig, og Selskabet overgaar til Konkursbehandling ved Skifteretten i Overensstemmelse med de i § 25, 5te Stykke givne Regler. Et gensidigt Livsforsikrings-selskab kan dog ikke tages under Konkursbehandling efter Begæring af nogen af de forsikrede i Selskabet.

**27.** Ved Administrationens Indtræden bortfalder Selskabets Ret til at drive Livsforsikringsvirksomhed.

Saa længe Administrationen varer, kan Tegning af ny Forsikringer og Tilbagekøb af ældre Forsikringer ikke finde Sted. Dog kan Genkøbsværdien helt eller delvis anvendes til Dækning af Laan, der ere stiftede i Henhold til § 18 Nr. 6.

**28.** Forsikringsraadet har at besørge Forvaltningen af de fra Selskabet modtagne Midler og kan, om fornødent, ved Fogdens Hjælp kræve alle Selskabets til Administrationen nødvendige Bøger og Dokumenter udleverede.

Forsikringskrav, som for Administrationens Begyndelse vare forfaldne eller anmeldte, skulle afgøres efter de for nævnte Tidspunkt gældende Regler. Forsikringer, som forfalde senere, blive foreløbig kun at udbetale med et saa stort Beløb, som Forsikringsraadet efter Omstændighederne finder ubetænkeligt. Ingen er forpligtet til at tilbagebetale, hvad han paa denne Maade maatte have modtaget ud over det Beløb, som efter den endelige Nedsættelse af Forsikringsbeløbene vilde tilkomme ham.

**29.** Forsikringsraadet har uopholdelig at lade foretage Vurdering af de fra Selskabet modtagne Midler samt at foretage en Beregning af Forsikringsfondets Beløb opgjort til den første Dag i den efter Administrationens Begyndelse faldende Maaned. Herunder bliver Premiereserven at beregne efter de for Selskabet ved Administrationens Begyndelse gældende Beregningsgrundlag, medmindre Forsikringsraadet finder, at disse ikke ere betryggende, i hvilket Tilfælde det selv fastsætter Grundlaget for Beregningen.

**30.** Forsikringsraadet har snarest muligt, efter at Vurdering og Beregning i Henhold til § 29 har fundet Sted, at søge den hele Forsikringsbestand overtagen af et eller flere, indenlandske Livsforsikringsselskaber. Indkommer der Tilbud om saadan Overtagelse, har Forsikringsraadet, hvis det finder Tilbudet antageligt, at udarbejde en Redegørelse for Stillingen og et Forslag til Overenskomst med vedkommende Selskab. Vil Overenskomsten medføre en Nedsættelse af Forsikringsbeløbene, skal denne Nedsættelse angives.

Redegørelsen og Forslaget skulle offentliggøres i Statstidenden og, hvis det findes hensigtsmæssigt, tillige i andre Aviser. De skulle derhos i anbefalet Brev tilstilles samtlige Forsikringstagere, hvis Adresse er kendt, med Opfordring til inden en af Forsikringsraadet fastsat, passende Frist, der dog ikke maa være kortere end fjorten Dage, at afgive Udtalelse om, hvorvidt de samtykke i Over-



the council shall forthwith at the expense of the company or society insert a publication to this effect in the newspapers in which publications relative to bankruptcy are inserted, and make a declaration in the commercial register regarding the commencement of the administration. Further, the assurance council must take possession of the securities set apart for the assurance fund and such securities belonging to the guarantee fund as have been marked in the manner prescribed in § 20. In the case of life assurance joint stock companies, these resources shall constitute special assets serving exclusively as security for the claims of the persons assured.

If a joint stock company which does life assurance business becomes bankrupt, the Bankruptcy Court, immediately after the commencement of the bankruptcy, shall send the securities mentioned to the assurance council.

The individual persons assured must not present any claim against the company, but on the contrary, the assurance council on behalf of the estate of the administration may claim from the company that which, according to the calculation mentioned in § 29, may be wanting in the assurance fund and in the guarantee fund to the extent of the highest amount indicated in the third paragraph of § 17.

If a life assurance joint stock company becomes bankrupt after the commencement of the administration, such circumstance does not affect the estate which is being administered; on the other hand, in so far as mutual life assurance societies are concerned, the administration ceases forthwith, and they are subjected to bankruptcy proceedings conducted by the Bankruptcy Court in accordance with the rules provided in the fifth paragraph of § 25. A mutual life assurance society, however, must not be subjected to bankruptcy proceedings at the request of any person assured by such society.

27. When the administration commences, the company or society in question loses its right to do life assurance business.

As long as the administration lasts, fresh assurances must not be contracted, nor may repurchases of older assurances take place. The amount of such repurchases, however, may be employed, wholly or in part as security for loans contracted in accordance with § 18 No. 6.

28. The assurance council shall take charge of the administration of the assets received from the company or society concerned, and may, if necessary with the aid of the bailiff, exact that all the books and documents of the company or society which are necessary for such administration, shall be handed over to it.

Assurance claims which were due or had been presented before the commencement of the administration, shall be settled according to the rules which were in force before that time. Assurances which become due subsequently are provisionally discharged only to the extent of such amount as the assurance council, according to the circumstances, deems prudent. No person is bound to refund what he may have received in this manner beyond the amount which, according to the final reduction of the assurance amounts, would be due to him.

29. The assurance council shall forthwith make a valuation of the assets received from the company or society and calculate the amount of the assurance fund, reckoned up to the first day of the month following the commencement of the administration. In this estimate the premium reserve shall be calculated according to the basis of calculation applicable at the commencement of the administration, unless the assurance council is of opinion that such basis does not afford sufficient security, in which case the council itself fixes the basis of the calculation.

30. The assurance council, as soon as possible after the valuation and calculation have taken place in accordance with § 29, shall try to induce one or more Danish life assurance companies to take over all the assurances of the company or society. If offers are forthcoming to this effect, the assurance council, if it considers an offer acceptable, shall draw up a statement of the position and a project of agreement with the interested company. If the proposed agreement entails a reduction in the assurance amounts, this reduction shall be indicated.

The statement and the project shall be published in the State Gazette, and if it is thought advisable, also in other papers. They shall thereupon be sent in registered letters to all the persons assured whose address is known, and who shall be asked to declare, within a suitable period fixed by the assurance council, a period which, however, must not be shorter than fourteen days, whether they consent to

dragelsen. Den, som ikke inden Fristens Udløb har afgivet nogen Udtalelse, anses for at samtykke.

Saafermt paa denne Maade ikke over en Femtedel af samtlige Forsikringstagere nægter Samtykke, har Forsikringsraadet at overdrage Forsikringsbestanden overensstemmende med det fremsatte Forslag.

Er Overdragelse sket paa saadan Maade, at ikke alle Administrationsboets Midler ere medgaaede, har Forsikringsraadet at afgive Overskuddet til det tidligere Selskab eller — for saa vidt dette er et Livsforsikringsaktieselskab, der er taget under Konkursbehandling — til Selskabets Konkursbo.

31. Lykkes det ikke at overdrage Forsikringsbestanden overensstemmende med foregaaende Paragraf, har Forsikringsraadet at fastsætte den endelige Nedsættelse af Forsikringsbeløbene i Henhold til den foretagne Opgørelse og at sammenkalde en Generalforsamling af Forsikringstagerne til Stiftelse af et gensidigt Selskab. Til denne Generalforsamling gives to Maaneders Varsel. Indkaldelsen bekendtgøres og omsendes paa den i foregaaende Paragraf nævnte Maade. Ved Omsendelsen skal den være bilagt med en Redegørelse for Stillingen og den af Forsikringsraadet beregnede Nedsættelse af Forsikringsbeløbene og med Forslag til Vedtægter og Grundlag, hvorefter det ny Selskab skal drive sin Virksomhed.

Paa Generalforsamlingen vedtages Vedtægter med almindelig Stemmeferlighed, hvorefter der vælges Bestyrelse og øvrige Tillidsmænd i Selskabet. Bestyrelsen har at indsende Beretning til Indenrigsministeren med Andragende om Tilladelse for Selskabet til at træde i Virksomhed. Foretager Generalforsamlingen Ændringer i de af Forsikringsraadet foreslaaede Vedtægter eller Grundlag, bliver Tilladelse at søge paa den i §§ 11 og 12 foreskrevne Maade.

Naar Tilladelse er meddelt, har Bestyrelsen for det gensidige Selskab at indsende Anmeldelse til Handelsregistret. Ved Registreringen indtræder det gensidige Selskab i den i § 26, 3die Stykke, omhandlede Ret lige over for det tidligere Selskab.

Lykkes det ikke paa den angivne Maade at stifte et nyt Selskab, fortsættes Administrationen, og det er da overladt til Forsikringsraadet, hvorvidt yderligere Forsøg paa at overføre Forsikringerne til et nyt eller andet Selskab skulle foretages.

### Om Overdragelse og Sammenslutning.

32. Vil et Selskab overdrage sin hele Livsforsikringsbestand eller en bestemt Del af denne til et andet Selskab, saaledes at det første Selskab derved fuldstændig befries for Ansvar over for Forsikringstagerne, maa det erhverve Forsikringsraadets Tilladelse dertil. Andragende om saadan Overdragelse maa være ledsaget af Udkast til den Overenskomst, der agtes afsluttet mellem de to Selskaber, og tillige — efter Forsikringsraadets nærmere Forskrifter — af saadaane Oplysninger om de to Selskaber, at Forsikringsraadet paa Grundlag heraf kan bedømme, hvorvidt Overdragelsen maa anses forsvarlig over for Forsikringstagerne.

Finder Forsikringsraadet herefter, at Tilladelsen til Overdragelsen bør nægtes, har det uopholdelig at give Selskabet Meddelelse om Nægtelsen.

I modsat Fald har Forsikringsraadet at lade indrykke i de i § 30 angivne Aviser en Redegørelse angaaende de væsentlige Betingelser for den paatænkte Overdragelse tilligemed en Opfordring til de Forsikringstagere, hvis Forsikringer agtes overdragne, til inden 3 Maaneder at afgive skriftlig Meddelelse til Forsikringsraadet, saafermt de ikke ønske Overdragelsen iværksat. Den, som ikke inden den anførte Frist har afgivet nogen Udtalelse, anses for at samtykke.

Derhos har Forsikringsraadet at paase, at det Selskab, hvis Forsikringer ønskes overdragne, i anbefalet Brev tilstiller hver enkelt af de paagældende Forsikringstagere, hvis Adresse er bekendt, den ovenfor nævnte Redegørelse og Opfordring.

Saafermt der inden Udløbet af den anførte Frist indkommer Indsigelse mod Overdragelsen fra mindst en Femtedel af Forsikringstagerne, kan Overdragelsen ikke finde Sted.

the proposed transfer. The persons assured who have not, before the expiration of the said period, declared themselves in regard to this point, are considered as having given their consent.

If, in this manner, not more than a fifth of all the persons assured refuse to give their consent, the assurance council shall transfer the assurances in accordance with the project proposed.

If the transfer has taken place without all the assets of the estate under administration having been employed, the assurance council shall hand over the excess to the old company or society, or — if it is a life assurance joint stock company which has been subjected to bankruptcy proceedings — to the company's bankruptcy estate.

31. If it does not prove feasible to transfer the assurances in accordance with the preceding Article, the assurance council shall fix the final reduction of the assurance amounts according to the statement drawn up, and convene the persons assured to a general meeting with a view to establishing a society based on mutuality. The notice convening this general meeting must be a two months' notice. The notice is published and served in the manner indicated in the preceding Article. When the notice is served, it shall be accompanied by an account of the position of the company or society, and of the reduction of the assurance amounts calculated by the assurance council, and also by the proposed statutes (articles of association) and basis in accordance with which the new society is to carry on its operations.

At the general meeting the statutes are adopted by an ordinary majority, whereupon the managing directors and other officials of the society are elected. The directors shall send a report to the Minister of the Interior with an application for the authorisation of the society to commence its operations. If the general meeting alters the statutes or the basis proposed by the assurance council, authorisation must be applied for in the manner indicated in §§ 11 and 12.

When authorisation has been granted, the directors of the new mutual society shall make a declaration in the commercial register. The new society, by means of such registration, obtains the right as against the old company or society which is dealt with in the third paragraph of § 26.

If it is not feasible to establish a new society in the manner indicated, the administration is continued, and in such case it is left to the assurance council to decide whether further efforts shall be made with a view to having the assurances transferred to a new or some other company or society.

### **Transfer and amalgamation.**

32. If a company (society) wishes to transfer the total amount of its life assurances or a definite portion thereof to another company (society), in such a manner that the former company (society) is entirely discharged from its liability towards the persons assured, such company (society) must obtain the permission of the assurance council to do so. The application regarding the transfer must be accompanied by the proposed contract which it is intended to have concluded between the two companies (societies) and also — in accordance with the detailed directions of the assurance council — by such information regarding the two companies (societies) as to enable the assurance council, with the information as a basis, to judge whether the suggested transfer is justifiable as regards the persons assured.

If, after this, the assurance council is of opinion that the permission for the transfer ought to be refused, the council shall forthwith inform the company (society) of the refusal.

In the contrary case, the assurance council shall insert in the newspapers mentioned in § 30 an exposition of the essential terms of the projected transfer, and an invitation to the persons assured whose assurances it is intended to transfer, to send a declaration in writing to the assurance council within three months, if they do not desire the transfer to be carried out. A person who has not sent any declaration within the said period, is deemed to have consented.

The assurance council shall also see that the company (society) whose assurances it is desired to have transferred, sends in a registered letter to each of the interested persons assured whose address is known, the exposition and invitation above mentioned.

If before the expiration of the said period, objections to the transfer arrive from at least one fifth of the persons assured, the transfer shall not take place.

33. Ville to eller flere Livsforsikringsselskaber ved Sammenslutning danne et nyt Selskab og derved fuldstændig befri sig for Ansvar over for Forsikringstagerne, finde de i § 32 anførte Regler Anvendelse, saaledes at Sammenslutningen ikke kan finde Sted, saafremt der nedlægges Indsigelse af mindst en Femtedel af Forsikringstagerne i noget af de paagældende Selskaber.

Før det nydannede Selskab kan træde i Virksomhed, maa det erhverve Tilladelse dertil paa den i §§ 11 og 12 foreskrevne Maade.

### Forskellige Bestemmelser.

34. I Selskaber, der foruden Livsforsikringsvirksomhed drive anden Forsikringsvirksomhed, maa de i Henhold til § 17 til Sikkerhedsfondet henlagte Midler kun anbringes paa den i § 18 foreskrevne Maade, hvorhos de skulle opbevares og paategnes paa samme Maade, som i § 20 er fastsat for de til Forsikringsfondet henlagte Midler, og derfor i Tilfælde af Administration behandles sammen med disse.

35. Enhver Livsforsikringskontrakt skal indeholde de for Forsikringen gældende almindelige og særlige Forsikringsbetingelser.

36. Et Livsforsikringsselskab kan ikke uden Samtykke af hver enkelt Forsikringstager opløse sig, medmindre det forinden har overført sin hele Forsikringsbestand til et andet Selskab i Overensstemmelse med de i denne Lovs § 32 givne Regler.

37. Intet Livsforsikringsselskab, som herefter stiftes, maa i sit Firma optage Navnet paa et indenlandsk eller et her almen kendt udenlandsk Livsforsikringsselskab eller et Navn, som let kan forveksles dermed.

Intet Livsforsikringsaktieselskab maa knytte Betegnelsen „Andels“ til sit Navn eller betegne sine Aktionærer som „Andelshavere“.

38. I Tryksager og Henvendelser til Almenheden maa Selskabet ikke give urigtige eller vildledende Meddelelser. Naar i Meddelelser til Almenheden Aktie- eller Garantikapitalens Størrelse angives, skal det udtrykkelig fremhæves, hvor meget af Kapitalen der er indbetalt.

39. De i tilladte, danske Livsforsikringsselskaber forsikrede Summer ere fritagne for enhver Retsforfølgning.

Mortifikation af de Livsforsikringsdokumenter, som ere eller blive udstedte af tilladte, danske Livsforsikringsselskaber, kan ske paa den i Lov Nr. 78 af 1. April 1893 § 9 hjemlede Maade.

### Om udenlandske Livsforsikringsselskaber.

40. Udenlandske Selskaber skulle have Ret til her i Landet at drive Livsforsikringsvirksomhed, saafremt dette sker ved en Repræsentant (Generalagent) som i denne Lov foreskrevet og i øvrigt paa de i det efterfølgende fastsatte Vilkaar. Et og samme Selskab maa for Livsforsikringsvirksomhedens Vedkommende kun have een Repræsentant. Denne maa benytte Underagenter, hvis dette ikke er ham forbudt af Selskabet.

41. Repræsentanten skal være bosat her i Landet, være uberygtet og have Raadighed over sit Bo og, saafremt han ikke har dansk Indfødsret, opfylde de i Næringslov af 29. December 1857 § 2 Nr. 4 angivne Betingelser.

Et dansk Aktieselskab kan være Repræsentant, for saa vidt samtlige dets Bestyrelsesmedlemmer ifølge det foranstaaende hver for sig kunne være Repræsentanter. For at et Selskab af anden Art skal kunne være Repræsentant, maa samtlige dets ansvarlige Medlemmer opfylde den nævnte Betingelse.

42. Et udenlandsk Selskab, som driver Livsforsikringsvirksomhed her i Landet, skal i alle deraf flydende Retsforhold være undergivet dansk Lov og Rettergang og være underkastet danske Domstoles Afgørelse.

43. Et udenlandsk Selskab maa ikke drive Livsforsikringsvirksomhed her i Landet, forinden det dertil har erhvervet Tilladelse. Begæring om saadan Tilladelse indsendes til Forsikringsraadet og skal være ledsaget af: 1. Bevis for, at den valgte Repræsentant er i Besiddelse af de i § 41 nævnte Egenskaber; — 2. De i § 11 Nr. 1—6 og 8 foreskrevne Angivelser; — 3. officiel, af dansk Legation eller Konsul bekræftet Bevidnelse om, at Selskabet lovlig driver Livsforsikringsvirksomhed

33. If two or more life assurance companies (societies) desire, by means of an amalgamation, to establish a new company (society) and by doing so to discharge themselves entirely from liability towards the persons assured, the rules mentioned in § 32 apply, to the effect that the amalgamation cannot take place if at least one fifth of the persons assured by any one of the interested companies object to it.

Before the newly established company (society) can commence its operations, it must obtain an authorisation to do so as prescribed in §§ 11 and 12.

### Various provisions.

34. In the case of associations which, besides life assurance business, undertake other kinds of insurance, the securities set aside for the guarantee fund according to § 17 must be employed only in the manner prescribed in § 18, and further, such securities shall be kept and marked in the manner provided by § 20 for the securities appropriated to the assurance fund, and therefore, in case of administration, are dealt with together with these.

35. Every life assurance contract shall contain the general and special assurance conditions applicable to the assurance in question.

36. A life assurance company (society) cannot be dissolved without the consent of every individual assured, unless the company (society) has previously transferred the total amount of its assurances to another company or society in accordance with the rules given in § 32 of this Act.

37. No life assurance company or society which is established henceforth shall be allowed to include in its firm name, the name of a Danish or foreign life assurance company or society which is generally known here, or a name which can easily be mistaken for that of another company or society.

No life assurance joint stock company shall be allowed to add "co-operative" to its name or designate its shareholders as "co-operators".

38. In printed matter and communications to the public a company (society) must not give incorrect or misleading information. When in communications to the public the amount of the share or guarantee capital is stated, it shall be expressly pointed out how much of the capital has been paid up.

39. The amounts assured by authorised Danish life assurance companies or societies are not subject to any kind of legal process.

The annulment of the life assurance documents which are or may be issued by authorised Danish life assurance companies or societies, may take place in the manner provided in § 9 of Act No. 78 of 1 April 1893.

### Foreign life assurance companies (societies).

40. Foreign companies shall have a right to carry on life assurance business in Denmark, if such business is done by a representative (general agent) as provided in this Act and, generally, in accordance with the conditions settled hereinafter. In so far as life assurance business is concerned, one and the same company must have only one representative. Such representative may employ sub-agents, if his company has not forbidden him to do so.

41. The representative must have his domicile in this country, have a good reputation, and be capable of disposing of his property, and, if he has not the Danish native's right, must satisfy the conditions indicated in the Trades Act of 29 December 1857, § 2, No. 4.

A Danish joint stock company may be a representative, provided that all its managing directors separately are capable of being representatives according to the foregoing. In order that an association of any other kind may be a representative, all its responsible members must fulfil the said condition.

42. A foreign company carrying on life assurance operations in this country shall be subject to Danish law and procedure and the adjudication of Danish tribunals, in respect of all legal transactions resulting from such operations.

43. A foreign company must not do life assurance business in this country until it has been authorised to this effect. Applications for such authorisation are sent to the assurance council and shall be accompanied by: 1. The proof that the chosen representative possesses the qualifications mentioned in § 41; — 2. The indications prescribed in § 11 Nos. 1—6 and 8; — 3. An official certificate, attested by a Danish legation or consul, stating that the company in question legally carries

i sit Hjemland, tilligemed Oplysning om, hvor længe det har drevet saadan Virksomhed, og om, hvorvidt der i de sidste tre Aar fra de derværende Myndigheders Side er gjort nogen Bemærkning mod den Maade, hvorpaa Virksomheden der er udøvet, samt Eksemplarer af Selskabets Aarsberetning for indtil ti af de sidst for løbne Aar; — 4. Fuldmagt, saavel i Original som i behørig bekræftet dansk Oversættelse, for Repræsentanten til paa Selskabets Vegne at drive Livsforsikringsvirk somhed her i Landet og til i alle deraf flydende Retsforhold paa Selskabets Vegne at modtage Sogsmaal for danske Domstole; — 5. behørigt Bevis for, at den, som har udstedt Fuldmagten, er dertil berettiget, samt at Fuldmagten er udfærdiget i Overensstemmelse med Hjemlandets Love; — 6. en af Selskabet afgiven, behørig bekræftet Erklæring om, at det forpligter sig til, saa længe det har nogen Livsforsikring i Kraft her i Landet, bestandig at have en her bosiddende Repræsentant, samt uigenkaldelig Bemyndigelse for Forsikringsraadet til i det nedenfor i § 46 omhandlede Tilfælde at ansætte en Mand til paa Selskabets Vegne at modtage Sogsmaal og i øvrigt at repræsentere Selskabet; — 7. en af Selskabet afgiven, behørig bekræftet Erklæring om, at det forpligter sig til i alt, hvad Virksomheden her i Landet angaar, at underkaste sig dansk Lov og danske Domstoles Afgørelse; — 8. Bevis for, at Selskabet i Nationalbanken har deponeret paa saadanne Vilkaar, som Forsikringsraadet godkender, et Beløb af Eet Hundredetusinde Kroner.

44. Finder Forsikringsraadet, at de i foregaaende Paragraf foreskrevne Vilkaar ere opfyldte, meddeler det Selskabet Tilladelse til her i Landet at drive Livsforsikringsvirksomhed. Dog skal Tilladelsen nægtes, saafremt Selskabets tekniske Grundlag befindes at hvile paa et System, som aabenbart er af en saadan Art, at en betryggende Livsforsikringsvirksomhed ej derpaa kan grundes, eller saafremt Forsikringsraadet af anden Aarsag finder dets Virksomhed stridende mod almene Hensyn.

Meddeles Tilladelsen, lader Forsikringsraadet paa Selskabets Bekostning Bekendtgørelse derom tilligemed Repræsentantens Fuldmagt i dansk Oversættelse indrykke i Statstidenden. Det paahviler Repræsentanten at foranstalte den meddelte Tilladelse indført i Handelsregistret tilligemed Repræsentantens Fuldmagt, paa hvilken de i Lov af 1. Marts 1889 indeholdte Regler om Prokura skulle være anvendelige. Forinden saadan Indførelse har fundet Sted, maa Selskabet ikke begynde at tegne Forsikringer her i Landet.

45. Foretages nogen Ændring i Selskabets Vedtagter, skal Repræsentanten inden tre Maaneder derefter til Forsikringsraadet indsende Ordlyden af den tagne Beslutning i behørig bekræftet dansk Oversættelse.

Sker ellers nogen Ændring i noget af det, som i Henhold til § 43 er oplyst, skal Repræsentanten ufortøvet derom indsende skriftlig Oplysning til Forsikringsraadet.

46. Mister en Repræsentant nogen af de i § 41 foreskrevne Egenskaber, eller bliver han af nogen anden Grund ude af Stand til at udføre sit Hverv, eller frasiger han sig dette, eller tilbagekaldes hans Fuldmagt, uden at anden Repræsentant er ansat og godkendt, har Forsikringsraadet at antage en Mand til paa Selskabets Vegne at modtage Sogsmaal og i øvrigt lovligt at repræsentere Selskabet i Henseende til allerede indgaaede Forpligtelser, indtil Hindringen for Repræsentanten er ophørt, eller en anden er godkendt som Repræsentant. Forsikringsraadet har ufortøvet paa Selskabets Bekostning at lade indrykke Bekendtgørelse derom i de i § 30 angivne Aviser samt at foretage Anmeldelse desangaaende til Handelsregistret. Indtil Bekendtgørelse har fundet Sted om, at en Ordning er truffen i Overensstemmelse med Bestemmelsen i 1ste Punktum, skal en Forsikringstager have Ret til at indbetale forfaldne Forsikringsafgifter til Forsikringsraadet.

47. Repræsentanten er forpligtet til at give Forsikringsraadet alle de Oplysninger om Selskabet og dets Virksomhed her i Landet, som Forsikringsraadet finder fornødne, saa vel som, for saa vidt der indleveres Aktstykker, affattede i et fremmed Sprog, at bilægge disse med behørig bekræftet dansk Oversættelse. Endvidere har han i Overensstemmelse med de af Forsikringsraadet fastsatte Skemaer for hvert

on life assurance business in its country of origin, together with information as to how long it has carried on such business, and as to whether the authorities of the country of its origin have during the last three years in any way objected to the manner in which its business is carried on there, and copies of the company's annual balance-sheet for the ten preceding years; — 4. The power of attorney, as well in the original as in a duly confirmed Danish translation, given to the representative in order that he may be in a position to do life assurance business in this country on behalf of the company, and in all legal transactions arising from such business be sued on behalf of the company before Danish tribunals; — 5. A sufficient proof that the person who issued the power of attorney was entitled to do so, and that the power has been issued in accordance with the laws of the company's country of origin; — 6. A declaration made by the company, and duly authenticated, to the effect that the company engages itself, so long as it has any life assurance in force in this country, always to have a representative resident here, and an irrevocable power for the assurance council, in the event of the ease occurring which is mentioned below in § 46, to appoint a person who may be sued on behalf of the company and in other respects represent the company; — 7. A declaration made by the company, and duly authenticated, to the effect that it engages itself in all respects concerning its operations in this country to submit to Danish laws and the adjudication of Danish tribunals; — 8. A proof that the company has deposited in the National Bank on such conditions as the assurance council approves, an amount of one hundred thousand kroner.

**44.** If the assurance council is of opinion that the conditions prescribed in the preceding Article have been met, the council shall authorise the company to do life assurance business in this country. Such authorisation shall, however, be refused if the technical basis of the company is found to have been established on a system which is obviously of such a nature that life assurance operations based on it do not give sufficient security, or if the assurance council is of opinion for other reasons that its operations are contrary to the interests of the public in general.

If the authorisation is granted, the assurance council, at the expense of the company, inserts a publication to this effect, together with the representative's power of attorney in a Danish translation, in the State Gazette. It is incumbent on the representative to see that the authorisation granted is recorded in the commercial register, together with the representative's power of attorney, to which the rules regarding proxies, provided in the Act of 1 March 1889, shall apply. Until such declaration in the commercial register has been made, the company in question must not commence to conclude assurance contracts in this country.

**45.** If any alteration is made in the company's statutes (articles of association), the representative, within three months of such occurrence, shall report to the assurance council the text of the resolution which has been passed to this effect, in a duly certified Danish translation.

If any other alteration is made in regard to the matters mentioned in § 43, the representative shall forthwith inform the assurance council thereof in writing.

**46.** If a representative loses any of the qualifications prescribed in § 41, or if for some other reason he is unable to carry out his duties, or if he renounces his agency, or his authority is withdrawn without any other representative having been appointed and approved, the assurance council shall appoint a person who may be sued on behalf of the company, and in other respects may legally represent the company in regard to liabilities which have already been contracted, until the disqualification of the representative has ceased, or until some other person has been approved as representative. The assurance council, at the expense of the company, shall forthwith insert a publication to this effect in the newspapers mentioned in § 30, and make a corresponding declaration in the commercial register. Until the publication has been inserted, stating that a settlement has been arrived at in accordance with the rule given in the first sentence, any person assured is entitled to pay such premiums as are due for payment to the assurance council.

**47.** It is incumbent on the representative to give the assurance council all such information regarding the company and its operations in this country as the assurance council deems necessary, as well as, when documents drafted in a foreign language are sent to the council, to enclose together with them a duly certified Danish translation. Further he shall, in accordance with the forms settled by the assurance council,

Regnskabsaar at affatte og inden 8 Maaneder efter dets Udlob til Forsikringsraadet at indsende en Indberetning angaaende Selskabets Virksomhed her i Landet i det forløbne Aar samt inden 2 Maaneder efter Selskabets Generalforsamling at fremsende den af Selskabets Bestyrelse afgivne Aarsberetning og Revisionens Udtalelser.

48. Det i § 43 Nr. 8 omhandlede Depositum skal udelukkende tjene som Sikkerhed for Fyldestgørelse af Forpligtelser ifølge Forsikringskontrakter, afsluttede her i Landet med danske Statsborgere, eller til Dækning af Beløb, som Selskabet er pligtigt til at udrede i Henhold til denne Lov, derunder ogsaa Bøder.

Hvis det nævnte Depositum som Følge af Prisfald paa de deponerede Værdier eller som Følge af, at disse ere tagne til Dækning af de forannævnte Krav, eller af anden Aarsag gaar ned under det fastsatte Beløb af Eet Hundredetusinde Kroner, paahviler det Selskabet at udfylde det manglende inden 4 Uger, efter at Repræsentanten af Forsikringsraadet er anmodet derom.

Sker det ikke, har Selskabet forbrudt sin Ret til at drive Livsforsikringsvirksomhed her i Landet. Forsikringsraadet har i saa Fald paa Selskabets Bekostning at bekendtgøre dette i de i § 30 angivne Aviser samt at foretage Anmeldelse desangaaende til Handelsregistret.

49. Ophører Selskabet at drive Livsforsikringsvirksomhed her i Landet, har det Ret til at tilbagetage det i Overensstemmelse med § 43 deponerede Beløb, naar det godtgør, at samtlige dets i § 48 nævnte Forpligtelser ere opfyldte, eller at det har stillet saadan Sikkerhed for Opfyldelsen af disse, som Forsikringsraadet finder betryggende. Det paahviler Selskabet at foretage Anmeldelse herom til Handelsregistret.

50. Holder Selskabet sig ikke nærværende Lov efterrettelig, eller indtræder der Forandring i de Forhold, som have været bestemmende for at meddele Selskabet Tilladelse til at drive Livsforsikringsvirksomhed her i Landet, kan Forsikringsraadet fratage det Tilladelsen. Om Tilladelsens Fratagelse foretages Anmeldelse til Handelsregistret paa Selskabets Bekostning af Forsikringsraadet.

51. Udenlandske Selskaber, som drive Livsforsikringsvirksomhed her i Landet, skulle i deres Tryksager og Henvendelser til Almenheden angive saavel deres Hjemland som deres Egenskab af Aktieselskab eller gensidigt Selskab. Det er dem forbudt, selv eller ved deres Agenter og Personale, at betegne sig som kontrollerede af den danske Stat eller at anvende dermed enstydig Betegnelse.

De i tilladte, udenlandske Selskaber forsikrede Summer ere fritagne for enhver Retsforfølgning.

Overfor her i Landet tilladte udenlandske Selskaber bemyndiges Regeringen til efter forud indhentet Erklæring fra Forsikringsraadet at fastsætte særlige Regler angaaende Ansættelsen af den Nettoindtægt, hvoraf Skatter og Afgifter til det offentlige beregnes, dog med den Begrænsning, at vedkommende fremmede Selskaber ikke derved blive gunstigere stilled med Hensyn til Ansættelsen af den skattepligtige Nettoindtægt her i Landet, end danske Selskaber ere det i vedkommende fremmede Land<sup>1)</sup>.

De i nærværende Lovs §§ 35 og 38 givne Forskrifter komme ogsaa til Anvendelse paa udenlandske Selskaber.

### Om Forsikringsraadet.

52. Det i nærværende Lov paabudte Tilsyn med Livsforsikringsanstalter skal udøves af et af Kongen udnævnt Forsikringsraad. Dette skal bestaa af en Formand, der skal være matematikkyndig Forsikringstekniker, og af mindst to andre Medlemmer, hvoraf det ene skal være i Besiddelse af de for Dommere nødvendige Egenskaber.

Formanden lønnes med 8,000 Kr. aarlig, stigende hvert 4de Aar med 500 Kr., indtil 10,000 Kr.; han er pensionsberettiget efter Pensionsloven. Der tillægges de andre Medlemmer aarlige Honorarer. De fornødne Beløb saavel hertil som til Medhjælp for Raadet og til Kontorhold bestemmes ved de aarlige Finanslove.

<sup>1)</sup> Dette Stykke er tilføjet ved Lov Nr. 115 af 16 April 1907.



make and within eight months of its expiration, send to the assurance council a statement for every financial year regarding the operations of the company in this country during the preceding year, and within two months of the company's general meeting, send the balance-sheet made out by the company's managing directors together with the observations of the auditors.

48. The deposit dealt with in § 43 No. 8 shall serve exclusively as a guarantee for the payment of liabilities incurred in respect of assurance contracts concluded in this country with Danish citizens, or as security for amounts which the company is liable to pay in accordance with this Act, including also fines.

If the said deposit, in consequence of the fall in the price of the deposited securities, or in consequence of their having been taken as security for the aforesaid claims, or for any other reason, falls below the amount fixed of one hundred thousand kroner, the company is bound to provide the deficit within four weeks after the representative has been invited by the assurance council to do so.

If such deficit is not provided, the company forfeits its right to carry on life assurance operations in this country. In such case the assurance council, at the expense of the company, shall publish the circumstance in the newspapers mentioned in § 30 and make a declaration to this effect in the commercial register.

49. If a company ceases to do life assurance business in this country, it is entitled to withdraw the amount deposited in accordance with § 43, when it proves that all the liabilities mentioned in § 48 have been met, or that such security has been given for their satisfaction as the assurance council deems satisfactory. It is incumbent on the company to make a declaration regarding the matter in the commercial register.

50. If a company does not comply with the provisions of the present Act, or if the circumstances which have been decisive in regard to the granting of authorisation to the company to do life assurance business in this country are altered, the assurance council may withdraw the authorisation. The withdrawal of the authorisation is declared in the commercial register by the assurance council at the expense of the company.

51. Foreign companies doing life assurance business in this country, in their printed matters and communications to the public shall indicate both their country of origin and their character as joint stock company or mutual society. They are prohibited, either themselves or by means of their agents and employees, from designating themselves as being supervised by the Danish State or making use of an equivalent designation.

The amounts assured by authorised foreign companies are not subject to any legal process.

With respect to foreign companies authorised in this country, the Government, after having previously received a declaration in this regard from the assurance council, is authorised to make special rules in relation to the fixing of the net revenue on which public taxes, rates, and dues have to be calculated, subject to the restriction, however, that the interested foreign companies may not be granted more favourable conditions in regard to the fixing of the taxable and rateable net revenue in this country than Danish companies obtain in the foreign country in question<sup>1</sup>).

The provisions of § 35 and 38 of the present Act apply also to foreign companies.

### The Assurance Council.

52. The supervision prescribed according to the present Act in regard to life assurance establishments, shall be exercised by an assurance council nominated by the King. The council shall consist of a president, who shall be a mathematician and an expert in assurance technicalities, and of at least two other members, of whom one shall possess the qualifications requisite for judges.

The president receives an annual salary of 8000 kroner, rising every four years by 500 kroner up to 10 000 kroner; he is entitled to a pension in accordance with the Pension Act. The other members receive annual honoraria. The amounts necessary for this purpose, as well as for assistants of the council and for office expenses, are fixed in the annual Finance Acts.

<sup>1</sup>) This paragraph has been added by Act No. 115 of 16 April 1907.

Intet af Forsikringsraadets Medlemmer maa være ansat i eller tage Del i Lødselen af nogen her i Landet virkende Livsforsikringsanstalt.

Forsikringsraadet henhører under Indenrigsministeren, der fastsætter dets Forretningsorden.

For saa vidt Forsikringsraadet eller dets Embedsmænd og Funktionærer maatte findes pligtige at udrede Erstatning til private eller til Selskaber i Anledning af de Forsikringsraadet under dets Embedsforelse betroede Midler er Statskassen ansvarlig for saadan Erstatnings Udredelse, saafremt den ikke kan faas hos vedkommende Personer eller i deres Boer.

53. Det paahviler Forsikringsraadet aarligt til Indenrigsministeren at indgive en Beretning om Raadets Virksomhed i det forløbne Aar, en Sammenstilling af de Indberetninger og Regnskaber, som ere modtagne, samt en Fortegnelse over de saavel indenlandske som udenlandske Forsikringsanstalter, som ere berettigede til at drive Livsforsikringsvirksomhed her i Landet.

Beretningen skal udgives senest to Aar efter Udløbet af det Aar, den omhandler, og skal kunne faas til Købs gennem Boghandelen.

54. Enhver af Forsikringsraadet i Henhold til denne Lov truffen Afgørelse kan af vedkommende Selskab senest fjorten Dage efter modtagen Underretning om denne indankes for Indenrigsministeren, hvis Afgørelse er endelig. Saafremt Selskabet inden den angivne Frist forlanger det, skal Sagen, forinden endelig Afgørelse træffes, af Indenrigsministeren forelægges et Nævn til Erklæring. Dette Nævn skal bestaa af fem Medlemmer. De tre udnævnes af Kongen for fem Aar ad Gangen. Forsikringsraadet vælger det fjerde og Selskabet det femte Medlem. Indenrigsministeren fastsætter Nævnets Forretningsorden. Omkostningerne ved Nævnets Virksomhed fastsættes i hvert Tilfælde af Indenrigsministeren og udredes af Statskassen; dog skal Indenrigsministeren kunne paalægge Selskabet helt eller delvis at udrede Omkostningerne. Omgøres en af Forsikringsraadet truffen Afgørelse, der gaar ud paa at sætte et Selskab under Administration, har Forsikringsraadet straks at erklære Administrationen hævet samt paa Selskabets Bekostning at foretage Anmeldelse herom til Handelsregistret.

Kongen kan under Forudsætning af Gensidighed bestemme, at de af Raadets Afgørelser, som angaa noget her i Landet virkende dansk, svensk eller norsk Livsforsikringsselskab, skulle kunne forelægges en sagkyndig Myndighed, bestaaende af et lige stort Antal danske, svenke og norske Mænd til Udtalelse. Naar en saadan Bestemmelse er tagen, bortfalder for et saadant Selskabs Vedkommende Indhentelse af Erklæring af det i Paragraffens 1ste Stykke ommældte Nævn.

55. Samtlige danske og her i Landet tilladte udenlandske Livsforsikrings-selskaber skulle til Statskassen aarlig betale en Afgift af to pro mille af de i det foregaaende Aar indgaaede Præmier for her i Landet direkte tegnede Forsikringer, dog mindst Hundrede Kr. Indbetalingen sker til Forsikringsraadet senest en Maaned efter hvert Aars Regnskabsaflæggelse. Udebliver Betalingen over Forfaldstid, betales Afgiften med dens dobbelte Beløb.

### Lovens Omraade.

56. Denne Lov skal ikke finde Anvendelse paa: 1. Saadanne paa Gensidighed grundede fagligt eller stedligt snævert begrænsede Livsforsikringsselskaber, som paa enkelt Liv ikke overtage nogen Forsikring med Udbetaling af en Sum en Gang for alle til højere Beløb end 250 Kr. eller nogen Livrente til højere Beløb end 50 Kr. aarlig, medmindre Indenrigsministeren paa Grund af særlige Forhold efter Forsikringsraadets Indstilling træffer Bestemmelse herom for enkelte saadanne Selskabers Vedkommende. Dog skulle alle Selskaber af den her omhandlede Art gøre Anmeldelse til Indenrigsministeren overensstemmende med de i § 11 givne Regler, ligesom Forsikringsraadet kan kræve de yderligere Oplysninger, som det i hvert enkelt Tilfælde maatte finde fornødne. — 2. Statsanstalten for Livsforsikring, idet dog Bestemmelserne i §§ 23 Nr. 2, 35, 38, 55 og 57, 4de Stykke, skulle have Gyldighed ogsaa for denne Anstalt.

None of the members of the assurance council may be employed by or have any part in the management of a life assurance establishment operating in this country.

The assurance council is subordinate to the Minister of the Interior, who fixes its order of business.

In the case of the assurance council or its officials and functionaries being held liable to pay damages to private persons or to associations on account of securities entrusted to the assurance council by reason of its functions, the Exchequer is responsible for the payment of such damages, if such payment cannot be obtained from the persons in question or from their respective estates.

53. It is incumbent on the assurance council to send a statement every year to the Minister of the Interior regarding the operations of the council during the preceding year, a statement of the reports and accounts which have been received, and a list both of the Danish and the foreign assurance establishments which are authorised to do life assurance business in this country.

The statement shall be published at the latest within two years after the expiration of the year it concerns, and shall be capable of being purchased through the book trade.

54. Every decision come to by the assurance council in accordance with this Act, may be appealed against by the interested company, at the latest within fourteen days of the receipt of information of the decision, to the Minister of the Interior, whose decision is final. If the interested company within the said period requests it, the matter before being finally settled shall be submitted by the Minister of the Interior to a committee of experts for their opinion. The committee shall consist of five members, of whom three shall be appointed by the King for a period of five years. The assurance council chooses the fourth, and the interested company the fifth member. The Minister of the Interior fixes the mode of procedure of the committee. The costs connected with the operations of this committee are in each case fixed by the Minister of the Interior and defrayed by the Exchequer; the Minister of the Interior, however, shall be authorised to order the interested company to pay the costs in whole or in part. If a decision come to by the assurance council is modified, and such decision involves the subjecting of a company to administration, the assurance council shall forthwith declare the administration suspended, and at the cost of the interested company shall make a declaration to this effect in the commercial register.

The King, subject to the condition of reciprocity, may decide that the decisions of the council concerning any Danish, Swedish or Norwegian life assurance company or society operating in this country, shall be submitted to a committee of experts consisting of an equal number of Danes, Swedes and Norwegians, who give their opinion in the matter. When such a decision has been arrived at, the committee mentioned in the first paragraph of this article cannot be required to give its opinion in regard to the interested company.

55. All Danish and foreign life assurance companies and societies authorised in this country, shall pay to the State an annual amount of two per thousand of the premiums paid to them during the preceding year for assurances contracted directly in this country, with a minimum of one hundred kroner. Such payment is made to the assurance council within one month at the latest after the rendering of every year's statement of accounts. If the payment is not made within the stipulated period, double the amount must be paid.

### The scope of the Act.

56. This Act shall not apply to: 1. Life assurance societies based on mutuality and having such a narrow scope in regard to the kind and district of their operations as not to undertake any assurance of a single life involving payment once for all of a sum exceeding 250 kroner, or any life annuity exceeding 50 kroner, unless the Minister of the Interior, in accordance with propositions made by the assurance council, on account of special circumstances, decides otherwise in regard to particular societies of this kind. All the societies of this category, however, shall make a declaration to the Minister of the Interior in accordance with the rules enacted in § 11, and the assurance council may demand such further information as in each particular case it may consider necessary; — 2. The State institution for life assurance; the provisions of §§ 23, Nos. 2, 35, 38, 55 and 57, fourth paragraph, shall, however, apply also to this institution.

For Forsikringsselskaber, som udelukkende drive Livsforsikring ved at overtage Genforsikring, skal Indenrigsministeren kunne tillade de Afvigelser fra denne Lov, som maatte være nødvendige af Hensyn til Beskaffenheden af saadanne Selskabers Virksomhed.

Ligeledes kan Indenrigsministeren, saafremt nu bestaaende Selskaber eller Institutter, som før 1. Januar 1904 i Forbindelse med en Hovedvirksomhed, der ikke er Forsikring, har drevet en under denne Lov i øvrigt hørende Virksomhed, ønske Tilladelse til at fortsætte denne Virksomhed, efter Forsikringsraadets Indstilling meddele Tilladelse dertil og, naar særlige Forhold tale derfor, gøre enkelte Indskrænkninger i Lovens Anvendelse for disse Selskabers Vedkommende.

### **Straffe- og Tvangsbestemmelser m. m.**

**57.** Med Fængsel, jfr. Straffelovens § 25, eller Bøder fra 200 til 2000 Kr. anses enhver af Stifterne eller Indbyderne til Dannelse af ny Selskaber, naar Indbydelserne indeholde bevidst urigtige eller forvanskede Oplysninger.

Med Bøder fra 200 til 4000 Kr. anses de Medlemmer af et Selskabs Bestyrelse, som med Forsæt eller ved grov Uagtsomhed overtræde Bestemmelserne i §§ 15, 16, 17, 18, 19, 20, 22, 32, 33 og 34. Ere Selskabets Revisorer eller Aktuar medskyldige, anses disse med samme Bøder.

Med Bøder fra 200 til 4000 Kr. eller simpelt Fængsel i indtil 6 Maaneder straffes de Personer, der drive Livsforsikring uden Tilladelse eller paa andet Grundlag end det tilladte eller ere behjælpelige med saadan ulovlig Handlemåde.

Med Bøder fra 50 til 1000 Kr. anses enhver anden Overtrædelse af denne Lov. Med samme Straf anses enhver, som under sin Virksomhed for at skaffe Tilgang til det Selskab, for hvilket han virker, meddeler usande eller bevidst urigtige Oplysninger om og herved søger at nedsætte andre tilladte Selskaber.

Indenrigsministeren foranlediger Tiltale efter Indstilling fra Forsikringsraadet og bestemmer efter Overtrædelsens Betydning, om Sagen vil være at behandle som Justitssag eller offentlig Politisag.

**58.** Forsømmer et Selskab at efterkomme Paabudene i §§ 23, 24, 47 og 56, 1ste Stykke, fremtvinger Indenrigsministeren Efterkommelsen ved at paalægge hvert enkelt af de deri skyldige Medlemmer af Selskabets Bestyrelse eller Repræsentanten for et fremmed Selskab en daglig Bøde fra 10 til 50 Kr.

Bøderne efter denne Lov, saavel Straffebøder som Tvangsbøder, tilfalde Statskassen.

**59.** For alle Anmeldelser til Handelsregistret, der foretages efter nærværende Lov, bliver der at erlægge det i Lov af 1. Marts 1889 om Handelsregistre, Firma og Prokura § 36 foreskrevne Gebyr.

### **Overgangsbestemmelser.**

**60.** Nærværende Lov, der ikke gælder for Færøerne, træder i Kraft den 1. Januar 1905; dog skulle de Bestemmelser, der angaa Oprettelsen af Forsikringsraadet, kunne træde i Kraft før nævnte Tidspunkt, efter Indenrigsministerens Bestemmelse. Loven kommer til Anvendelse ogsaa paa indenlandske Selskaber, som allerede ved dens Ikrafttræden drive Livsforsikringsvirksomhed her i Landet, dog med følgende Lempelser: 1. Selskabet har en Frist af indtil 5 Maaneder, regnet fra Dagen for Lovens Ikrafttræden, til Indsendelse af det i § 11 nævnte Andragende samt, for saa vidt Forsikringsraadet maatte kræve foretaget Forandringer i Grundlaget for Selskabets Virksomhed til Opfyldelse af nærværende Lovs Forskrifter, en Frist af indtil 5 Aar, regnet fra Kravets Fremsættelse, til Udførelse heraf efter en af Forsikringsraadet godkendt Plan; — 2. Selskabet kan til Opfyldelse af Forskrifterne i § 3 medregne de Fonds, hvoraf det — uden for Forsikringsfondet — maatte være i Besiddelse, ligesom Indenrigsministeren kan tilstede Afvigelser fra de i §§ 3, 4, 7, 1ste og 2det Stykke, 8, 2det Stykke, og 34 indeholdte Regler, og

With regard to insurance companies which do life assurance business exclusively by means of contracting re-insurances, the Minister of the Interior is authorised to allow such departures from this Act as may be considered necessary by reason of the nature of the operations of such companies.

Similarly, if companies or establishments now existing which, prior to the 1st of January 1904, in connection with their principal operations which are not assurance, have carried on operations in all other respects coming within the scope of this Act, desire to be authorised to continue such operations, the Minister of the Interior, in accordance with propositions made by the assurance council, may authorise them to do so, and, when special circumstances are in favour of an arrangement of this kind, may allow certain restrictions concerning the application of the Act in regard to this kind of associations.

### Penal and coercive provisions, etc.

57. The founders or promoters of the establishment of new companies or societies are liable to imprisonment (see § 25 of the Penal Code) or fines of from 200 to 2000 kroner, when the prospectuses issued contain information which is proved to be incorrect or to have been falsified.

Managing directors of a company or society who deliberately or wantonly infringe the provisions contained in §§ 15, 16, 17, 18, 19, 20, 22, 32, 33 and 34, are liable to fines of from 200 to 40000 kroner. If an auditor or actuary of the company or society is an accomplice, he is subject to the same fines.

Persons who engage in life assurance operations without having obtained the requisite authorisation, or on some other basis than that which is authorised, or who aid in carrying out such illegal transactions, are liable to fines of from 200 to 4000 kroner or simple imprisonment for not exceeding six months.

Any other infringement of this Act entails liability to fines of from 50 to 1000 kroner. Any person who, in the course of his operations to further the business of the company or society for which he is working, makes representations which are false or proved to be incorrect, in regard to other authorised companies or societies, and by doing so tries to prejudice them, is subject to the same punishment.

The Minister of the Interior orders prosecutions in pursuance of propositions made by the assurance council, and decides, according to the importance of the infringement in question, whether the matter shall be treated as a judicial matter, or as a public police matter.

58. If a company or society neglects to comply with the provisions of §§ 23, 24, 47 and 56, first paragraph, the Minister of the Interior enforces the observance thereof by imposing on each of the directors of the company or society who are responsible for the infringement, or on the representative in case of a foreign company, a fine of from 10 to 50 kroner per day.

Fines under this Act, whether penalties or coercive fines, accrue to the funds of the State.

59. For all declarations in the trade register which are made in accordance with the present Act, the fees prescribed in § 36 of the Act of 1 March 1889 regarding trade registers, firms and proxies must be paid.

### Transitory provisions.

60. The present Act, which does not apply to the Farøe Islands, comes into force on the 1st January 1905; the regulations, however, concerning the establishment of the assurance council, shall come into force before the said date in accordance with the decision of the Minister of the Interior. The Act applies also to Danish companies and societies which already do life assurance business in this country at the date of its coming into force, subject, however, to the following modifications: 1. The company or society is granted a period of not exceeding five months, counted from the day on which the Act comes into force, for sending the application mentioned in § 11, and, in so far as the assurance council requires that modifications shall be made in the basis of the company's operations with a view to complying with the provisions of this Act, a period of not exceeding five years, counted from the day on which the requirement was made to the day on which it is carried out according to a scheme approved by the assurance council; — 2. The company or society, in order to carry out the provisions of § 3, may include the funds which — in addition to its assur-

med Hensyn til for 1. Januar 1904 bestaaende Selskaber tillige fra § 19, 2det Stykke: — 3. Indenrigsministeren kan tilstede Afvigelser fra de i § 15, sidste og næstsidste Stykke, givne Regler, for saa vidt angaar Genforsikring eller Forsikring under solidarisk Medansvar, hvorom Aftale maatte være truffen for Lovens Ikrafttræden.

Efter derom indgivet Andragende skal Forsikringsraadet, naar særlige Forhold maatte gøre det ønskeligt, være berettiget til, for de ved denne Lovs Ikrafttræden bestaaende Forsikringer at tillade andet Beregningsgrundlag for Præmiereserven end i § 15, 2 foreskrevet, for saa vidt der herved opnaas tilstrækkelig Betryggelse for de forsikrede.

Et udenlandsk Forsikringsselskab, som ved denne Lovs Ikrafttræden allerede driver Livsforsikringsvirksomhed her i Landet, skal, saafremt det ønsker at fortsætte denne Virksomhed, inden 3 Maaneder efter denne Lovs Ikrafttræden dertil erhverve Tilladelse paa den i denne Lov foreskrevne Maade og ved Begæringen derom til de i § 43 anførte Bevisligheder og Oplysninger yderligere føje en Beretning om Selskabets Virksomhed her i Landet i det sidst forløbne Aar samt om Størrelsen af Forsikringsbestanden her i Landet ved Udlobet af nævnte Aar.

**61.** I den ordentlige Rigsdagssamling 1911 forelægges denne Lov Rigsdagen til Revision.

Hvorefter alle vedkommende sig have at rette.

Givet paa Amalienborg, den 29de Marts 1904.

Under Vor Kongelige Haand og Segl.

Christian R.

(L. S.)

Encenvold Sørensen.

## **C. De Jernbaner, Post- og Telegrafvæsen vedrørende Love m. m.**

Lov Nr. 36 af 30 Marts 1894 om Danmarks Tiltrædelse af en international Overenskomst om Godsbefordring paa Jernbaner, jvf. Bekendtgørelse Nr. 135 af 30 September 1897 om Danmarks Tiltrædelse af den internationale Overenskomst af 14 Oktober 1890 om Godsbefordring paa Jernbanerne.

Politilov (Nr. 85) af 11 Maj 1897 for de under Statsdrift værende Jernbaner med tilhørende Sorouter, jvf.

Politireglement (Nr. 31) af 22 Januar 1900 for Statsbanerne med Ændringer af 23 Juni 1902 og 2 Februar 1904.

Politi-Anordning (Nr. 191) af 17 November 1903 for Jernbaner under Privatdrift.

Lov Nr. 56 af 26 Marts 1898 om Erstatningsansvar for Skade ved Jærnbanedrift.

Lov Nr. 81 af 15 Maj 1903 om Statsbanernes Ordning.

Lov Nr. 105 af 15 Maj 1903 om Statsbanernes Takster m. m. med Tillægslov af 27 Maj 1908.

Danmark har tiltraadt Verdenspostforeningen, jvf. Bekendtgørelse (Nr. 149) af 30 Maj 1907 om Stadfæstelse af den paa Postkongressen i Rom den 26 Maj 1906 vedtagne Konvention angaaende Verdenspostforeningen og Bekendtgørelser (Nr. 150—154) af samme Dato vedrørende Overenskomster angaaende Breve og Æsker med angiven Værdi, Postanvisninger, Postpakker og Tidender og Tidskrifter samt Postindkasseringssjenesten.

Særlige Overenskomster foreligge derhos mellem Danmark og henholdsvis Tyskland, Norge, Sverig, England, Island, Dansk Vestindien, Frankrig, Rusland, Amerikas Forenede Stater, Kanada og Britisk Indien.

Bekendtgørelse (Nr. 105) af 3 Juni 1902 indeholder den gældende danske Postlov (Nr. 57) af 5 April 1888 med de Forandringer i samme, som følge af Lov (Nr. 136) af 10 December 1896 om Tillæg til Postloven samt af Lov (Nr. 98) af 23 Maj 1902

ance fund — the company or society may possess, and the Minister of the Interior may also permit departures from the rules contained in §§ 3, 4, 7, 1st and 2nd paragraphs, 8, 2nd paragraph and 34, and in regard to companies or societies which existed before 1 January 1904, also from those contained in § 19, 2nd paragraph; — 3. The Minister of the Interior may permit departures from the rules enacted in § 15, last two paragraphs, in so far as re-insurance or assurance with joint and several responsibility is concerned, as to which an agreement may have been entered into before the Act came in to force.

In accordance with applications presented to this effect, the assurance council, when special circumstances require that such a course shall be followed, shall be authorised, in regard to assurances existing at the time when this Act comes into force, to permit another basis for the calculation of the premium reserve than that prescribed in § 15, par. 2, provided that sufficient security for the persons assured is obtained in this manner.

A foreign assurance company or society, which at the time when the Act comes into force, is already doing life assurance business in this country, shall, if it wishes to continue this kind of business, within three months of the Act coming into force, obtain authorisation to do so in the manner prescribed in this Act, and when applying for such authorisation shall annex the documents and information indicated in § 43, with an account of the company's (society's) operations in this country during the preceding year and of the total amount assured in this country at the expiration of the said year.

61. This Act shall be submitted to the Rigsdag for revision in the regular session of the Rigsdag of 1911.

All persons concerned shall act accordingly.

Given at Amalienborg, the 29th March 1904.

Under Our Royal Hand and Seal.

Christian R.

(L. S.)

Enevold Sørensen.

### C. Laws concerning Railways, Post, Telegraphs, etc.

Act No. 36 of 30 March 1894, concerning Denmark's joining an international agreement with regard to the transport of goods on railways; see Publication No. 135 of 30 September 1897 regarding Denmark's joining the international agreement of 14 October 1890, dealing with the transport of goods on railways.

Police Act (No. 85) of 11 May 1897 for the railways which are exploited by the State together with the shipping lines belonging to them; see

Police Regulation (No. 31) of 22 January 1900 for the State railroads with the modifications of 23 June 1902 and 2 February 1904.

Police Ordinance (No. 191) of 17 November 1903 for railways exploited by private companies.

Act No. 56 of 26 March 1898, concerning the liability to pay compensation for damage caused by the exploitation of railways.

Act No. 81 of 15 May 1903, concerning the regulation of the State railways.

Act No. 105 of 15 May 1903, concerning the tariffs of the State railways, etc., with supplementary Act of 27 May 1908.

Denmark has joined the Universal Postal Union; see Publication (No. 149) of 30 May 1907, concerning the confirmation of the Convention regarding the Universal Postal Union approved at the Postal Congress in Rome the 26th May 1906, and Publications (Nos. 150—154) of the same date concerning agreements regarding letters and packets the value of which is indicated, postal orders, postal parcels, newspapers and periodicals, and the postal service for recovery of cash on delivery.

Further, special agreements are in force between Denmark and Germany, Norway, Sweden, England, Iceland, Danish West Indies, France, Russia, United States of America, Canada and British India, respectively.

The Publication (No. 105) of 3 June 1902 contains the Danish Post Act (No. 57) of 5 April 1888 now in force, with those alterations in it which result from Act (No. 136) of 10 December 1896 supplementary to the Post Act, and from Act (No. 98)

om Portotakster. Heri er dog senere gjort Ændringer ved Lov (Nr. 176) af 2 August 1907 og Lov (Nr. 154) af 12 Juni 1908.

Loven omhandler følgende Æmner:

Afsnit I: Om Genstandene for Postvæsnets Virksomhed og dennes Omfang og Beskaffenhed.

- § 1. Postvæsnets Eneret.
- § 2. Undtagelser fra Eneretten;
- § 3. Genstandene for Postbesørgelsen.
- § 4. Postbesørgelsens Omfang og Udførelse.
- § 5. Genstande, der ere udelukkede fra Postbesørgelse.
- § 6. Forretninger, som Postvæsnet er bemyndiget til at udføre.

Afsnit II: Om Postgangen og Postens Befordring.

- § 7. Postens Befordring i Almindelighed.
- § 8. Benyttelse af privat regelmæssig Landbefordring.
- § 9. Benyttelse af private Skibe.
- § 10. Befordring ud over de ordinære Transportmidler.
- § 11. Særegne Rettigheder i Henseende til Postens Fremførelse.

Afsnit III: Om Betalingen for Benyttelse af Posten.

- § 12. Portotakster.
- § 13. Portoens Udredelse.
- § 14. Postfrimærker.
- § 15. Frigørelse af Statsmyndighedernes Tjenestekorrespondance.

§ 16. Betaling for særlige Tjenester eller Ydelser.

Afsnit IV: Om Postvæsnets Erstatningspligt.

- § 17. Erstatningspligtens Omfang.
- § 18. Erstatningspligtens Ophor.

Afsnit V: Om Overtrædelser af Postlovgivningen.

- § 19. Ulovlig Forsendelse.
- § 20. Ulovlig Indlægning.
- § 21. Misbrug af Tjenestefrimærker m. m.
- § 22. Uidskrevne Rejsende.
- § 23. Overtrædelser med Hensyn til Postens Befordring.
- § 24. Overtrædelsernes Behandling og Paakendelse.
- § 25. Hvem Boderne o. s. v. tilfalde.

Afsnit VI: Forskellige Bestemmelser.

- § 26. Postforsendelsernes Aflevering. Posthemmeligheden.
- § 27. Postvæsnets Tilbageholdelsesret.
- § 28. Ubesørgede Genstande.
- § 29. Lovens Anvendelighed.
- § 30. Ophævelse af ældre Bestemmelser.
- § 31. Lovens Træden i Kraft.

Til Postloven slutter sig Anordning (Nr. 151) af 19 September 1902 om Posternes Benyttelse, der dog paa enkelte Punkter er ændret ved Anordningerne (Nr. 121) af 28 Juni 1904, (Nr. 65) af 17 April 1905, (Nr. 92) af 18 Maj 1905 og (Nr. 167) af 14 November 1905, (Nr. 232) af 22 September 1906, (Nr. 85) af 22 April 1907, (Nr. 190) af 29 August 1907, (Nr. 232) af 25 November 1907, (Nr. 161) af 12 Juni 1908 og (Nr. 172) af 28 Juli 1909.

Lov (Nr. 84) af 11 Maj 1897 om Telegrafer og Telefoner:

Kap. I: Om Statens Eneret.

Kap. II: Om Ledningers Anbringelse og Beskyttelse.

Kap. III: Om Hemmeligholdelsespligten m. m.

Bekendtgørelse (Nr. 139) af 18 Juni 1909 angaaende Telegrafkorrespondancen med Udlandet.

Bekendtgørelse (Nr. 140) af 18 Juni 1909 om Stadfastelse af internationalt Telegrafreglement.

Reglement (Nr. 170) af 24 Juni 1909 for Besørgelsen af indenlandske Telegrammer og Telefonsamtaler ved Statstelegraf- og Statstelefonvæsnet.

Lov (Nr. 99) af 19 April 1907 om traadløse Telegrafer (Radiotelegrafer).



of 23 May 1902 regarding postage tariffs. In these matters, however, modifications have more lately been made by Act (No. 176) of 2 August 1907 and Act (No. 154) of 12 June 1908.

The Act deals with the following subjects:

Section I: The objects of the operations of the post and their scope and nature.

- § 1. The monopoly of the post.
- § 2. Exceptions from the monopoly.
- § 3. Objects of the postal service.
- § 4. The extent and carrying on of the postal service.
- § 5. Objects which are excluded from the postal service.
- § 6. Operations which the post is authorised to carry out.

Section II: The circulation and transport of the post.

- § 7. The transport of the post in general.
- § 8. The employment of regular private transport by land.
- § 9. The employment of private vessels.
- § 10. Carriage by extraordinary means of transport.
- § 11. Special rights in regard to the transport of the post.

Section III: Payments for using the post.

- § 12. Postage tariffs.
- § 13. Payment of the postage.
- § 14. Postage stamps.
- § 15. Exemption from postage of the official correspondence of the functionaries of the State.
- § 16. Payment for special services and performances.

Section IV: Compensation to be paid by the post.

- § 17. Extent of the obligation to pay compensation.
- § 18. Cessation of the obligation to pay compensation.

Section V: Infringements of the postal legislation.

- § 19. Unlawful sending.
- § 20. Unlawful contents.
- § 21. Abuses in regard to the use of postage stamps, etc.
- § 22. Travellers not registered.
- § 23. Infringements in regard to the transport of the post.
- § 24. How the infringements are dealt with and judged.
- § 25. To whom the fines, etc., accrue.

Section VI: Miscellaneous regulations.

- § 26. The delivery of the post. The secrecy of the post.
- § 27. The right of retention of the post.
- § 28. Objects not delivered.
- § 29. Application of the Act.
- § 30. Abrogation of previous regulations.
- § 31. Coming into force of the Act.

The Post Act has been supplemented by the Ordinance (No. 151) of 19 September 1902, concerning the postal service which, however, on certain points has been modified by the Ordinances (No. 121) of 28 June 1904, (No. 65) of 17 April 1905, (No. 92) of 18 May 1905 and (No. 167) of 14 November 1905, (No. 232) of 22 September 1906, (No. 85) of 22 April 1907, (No. 190) of 29 August 1907, (No. 232) of 25 November 1907, (No. 161) of 12 June 1908 and (No. 172) of 28 July 1909.

Act (No. 84) of 11 May 1897, regarding telegraphs and telephones:

Chapter I: The monopoly of the State.

Chapter II: How the wires are placed and the lines protected.

Chapter III: The obligation in regard to secrecy, etc.

Publication (No. 139) of 18 June 1909 regarding telegraphic communications with foreign countries.

Publication (No. 140) of 18 June 1909, concerning the confirmation of the international telegraph regulations.

Regulation (No. 170) of 24 June 1909, regarding the sending of Danish telegrams and conversations by telephone by means of the telegraphs and telephones administered by the State.

Act (No. 99) of 19 April 1907, concerning wireless telegraphs (Radiotelegraphs).

## D. Konsularlove.

Kancelli-Cirkulære af 12 Maj 1821 angaaende fremmede Konsulers Rettigheder i Danmark.

Plakat af 25 September 1834 angaaende en nærmere Bestemmelse af Resolution 25 April 1821.

Lov (Nr. 79) af 19 Februar 1892 om Ægteskabs Indgaaelse for danske Konsuler i Udlandet og Lov (Nr. 269) af 14 December 1906 om Overenskomster vedrørende Ægteskaber, indgaaede for diplomatiske eller konsulære Embedsmænd.

Solovens §§ 30, 34, 40, 46, 47, 90, 100, 104, 105, 176 (se Soretten).

Bekendtgørelse (Nr. 40) af 18 Marts 1902 om Udstedelse af midlertidige Nationalitets-Certifikater for de i Udlandet for dansk Regning købte Skibe.

Lov (Nr. 92) af 27 Maj 1908 om Diplomat- og Konsulatvæsen.

Instruktion (Nr. 283) af 15 December 1893 for de danske Konsuler i Udlandet (med Kommentar), delvis ændret ved Bekendtgørelse (Nr. 179) af 22 April 1905.

Lov (Nr. 35) af 15 Februar 1895 om danske Konsulers Doms- og Øvrighedsmyndighed paa Steder, hvor Danske ikke ere undergivne Landets Jurisdiktion m. v.

Tillægs-Instruks (Nr. 180) af 1 September 1895 for Konsuler i de Lande, i hvilke Danske ikke ere undergivne Landets Jurisdiktion (med Kommentar).

Bkg. (Nr. 272) af 30 November 1908 om almindelig Gebyrtakst for danske Gesandtskaber og Konsulater.

Udenrigsministeriets Cirkulære (Nr. 14) af 3 Februar 1902 angaaende hvilke Rettigheder og Beføjelser det kan tillades de kongelige Konsularembetsmænd i Japan at udøve.

Lov (Nr. 81) af 23 Maj 1902 om forandret Affattelse af Solovens § 40, 3 og 4 Pkt. (angaaende Soforklaringer).

Bekendtgørelse (Nr. 176) af 25 November 1902 angaaende Bemyndigelse for visse danske Konsulater til at modtage Soforklaringer af danske Skippere.

Instruks (Nr. 294) af 25 November 1902 for danske Konsuler angaaende danske Skipperes Soforklaring i Udlandet.

Bkg. (Nr. 11) af 31 Januar 1909 om Reglement for Fagkonsuler.

Bkg. (Nr. 250) af 21 Oktober 1909 om Instruks for Generalkonsuler.

Bkg. (Nr. 15) af 24 Januar 1910 om Notarialmyndighed for ulønnede Generalkonsuler og Konsuler.

## E. De mellem Danmark og fremmede Stater afsluttede Handels- og Skibsfarts- Traktater og lign. Akter.

(Ordnet i alfabetisk Rækkefølge efter Landenes danske Navne.)

Algier: Freds-Artikler af 10 August 1746.

Argentinske Republik: Konferenceprotokol af 20 Januar 1841.

Belgien: Traktat af 1895, se Bkg. (Nr. 131) af 26 Juni 1895 samt Bkg. (Nr. 164) af 28 Juni 1910 om Konsular-Konvention.

Brasilien: Traktat af 26 April 1828.

Bulgarien: Overenskomst for 1910, jvf. Bkg. Nr. 24 af 20 Jan. 1911.

Chile: Traktat af 9 April 1899 og 1905, se Bkg. Nr. 132 af 11 Maj 1907.

Dominikanske Republik: Traktat af 1852, se Patent af 18 Maj 1853.

Frankrig: Traktat af 23 August 1742, Tillægs-Traktat af 9 Februar 1842.

Grækenland: Traktat af 1846, se Plakat af 10 Marts 1847. (Angaaende de Ioniske Øer, se Dekl. af 21 Juni 1858).

Hannover: Traktat af 1844, se Plakat af 6 November 1844.

Italien: Traktat af 1864, se Patent af 10 December 1864, med Tillægs-Artikel af 1902, se Bkg. Nr. 155 af 22 September 1902.

Japan: Traktat af 1895, se Bkg. Nr. 72 af 6 Maj 1896 og Bkg. Nr. 104 af 20 Juli 1898.

### D. Laws concerning the Consular Service.

Circular of the Chancery of 12 May 1821 concerning the rights of foreign consuls in Denmark.

Placard of 25 September 1834, concerning more detailed regulations in regard to the Resolution of 25 April 1821.

Act (No. 79) of 19 February 1892, regarding the celebration of marriage before Danish consuls abroad, and Act (No. 269) of 14 December 1906, regarding conventions in respect to marriages celebrated before diplomatic and consular officials.

The Maritime Act, §§ 30, 34, 40, 46, 47, 90, 100, 104, 105, 176 (see the Maritime Law).

Publication (No. 40) of 18 March 1902, concerning the issue of temporary naturalisation certificates for vessels bought abroad for the account of Danes.

Act (No. 92) of 27 May 1908, concerning the diplomatic and consular service.

Instruction (No. 283) of 15 December 1893 for Danish consuls abroad (with commentary), partly modified by the Publication (No. 179) of 22 April 1905.

Act (No. 35) of 15 February 1895, concerning the judicial and official competence of Danish consuls at places where Danes are not subject to the jurisdiction of the country, etc.

Supplementary Instruction (No. 180) of 1 September 1895, concerning consuls in those countries in which Danes are not subject to the jurisdiction of the country (with commentary).

Publication (No. 272) of 30 November 1908, concerning the ordinary tariff of fees of Danish embassies and consulates.

Circular of the Department for Foreign Affairs (No. 14) of 3 February 1902, concerning the rights and functions which are allowed to be exercised by the Royal Consular Officials in Japan.

Act (No. 81) of 23 May 1902, concerning the modification of the text of the third and fourth paragraphs of § 40 of the Maritime Law (concerning maritime reports).

Publication (No. 176) of 25 November 1902, concerning the authorisation of certain Danish consulates to receive maritime reports from Danish shipmasters.

Instruction (No. 294) of 25 November 1902 for Danish consuls, concerning the maritime reports of Danish shipmasters in foreign countries.

Publication (No. 11) of 31 January 1909, concerning the regulations for professional consuls.

Publication (No. 250) of 21 October 1909, concerning the instructions for general consuls.

Publication (No. 15) of 24 January 1910, concerning the competence as notaries of unpaid general consuls and consuls.

### E. Commercial and Navigation Treaties and similar Conventions concluded between Denmark and Foreign States.

(In alphabetical order according to the Danish names of the respective States.)

**Algeria:** Articles of Peace of 10 August 1746.

**Argentine Republic:** Protocol of the Conference of 20 January 1841.

**Belgium:** Treaty of 1895, see Publication of 26 June 1895 and Publication (No. 164) of 28 June 1910, concerning the consular convention.

**Brazil:** Treaty of 26 April 1828.

**Bulgaria:** Agreement of 1910, see Publication No. 24 of 24 January 1911.

**Chile:** Treaty of 9 April 1899 and 1905; see Publication No. 132 of 11 May 1907.

**Dominican Republic:** Treaty of 1852; see Letters Patent of 18 May 1853.

**France:** Treaty of 23 August 1742; Supplementary Treaty of 9 February 1842.

**Greece:** Treaty of 1846; see Placard of 10 March 1847 (concerning the Ionian Islands, see Declaration of 21 June 1858).

**Hanover:** Treaty of 1844; see Placard of 6 November 1844.

**Italy:** Treaty of 1864; see Letters Patent of 10 December 1864; with Supplementary Article of 1902; see Publication No. 155 of 22 September 1902.

**Japan:** Treaty of 1895; see Publication No. 72 of 6 May 1896 and Publication No. 104 of 20 July 1898.

- Kina:** Traktat af 1863, sé Patent af 12 November 1864.
- Kongo:** General-Akt af 26 Februar 1885, indeholdende de paa den internationale afrikanske Konferencé i Berlin vedtagne Bestemmelser, sé Bkg. Nr. 140 af 8 August 1885. Konvention af 1885 med det internationale Kongo-Selskab, sé Bkg. Nr. 167 af 14 September 1885.
- Korea:** Traktat af 1902, sé Bkg. Nr. 208 af 19 November 1903.
- Liberia:** Traktat af 1860, sé Patent af 7 April 1865.
- Marokko:** Konvention af 1880, sé Patent Nr. 110 af 23 Juni 1881.
- Mecklenburg-Schwerin:** Konvention af 25 November 1845.
- Mexiko:** Handels- og Skibsfartskonvention af 1910, jvf. Bkg. Nr. 236 af 11 November 1910.
- Monaco:** Traktat af 1845, sé Plakat af 25 Oktober 1845.
- Nederlandene:** Traktat af 15 Juni 1701, jvf. kgl. Befaling af 14 Januar 1732 og Dekl. af 10 Juli 1817.
- Nordamerikanske Fristater:** Konvention af 26 April 1826, jvf. Konvention af 11 April 1857, Art. 5.
- Norge:** Traktat af 2 November 1826.
- Oldenburg:** Deklaration af 31 Marts 1841.
- Paraguay:** Konvention af 1904, sé Bkg. Nr. 173 af 12 Oktober 1904.
- Persien:** Traktat af 1857, sé Patent af 24 September 1859.
- Portugal:** Deklaration af 1896, sé Bkg. Nr. 9 af 2 Februar 1898.
- Preussen:** Traktat af 17 Juni 1818, jvf. Konvention af 26 Maj 1846.
- Rumænien:** Handels- og Skibsfartskonvention af 1910, jvf. Bkg. Nr. 159 af 22 Juni 1910.
- Rusland:** Traktat af 1895, sé Bkg. Nr. 88 af 3 April 1895.
- Sandwichøerne:** Traktat af 19 Oktober 1846.
- Schweiz:** Traktat af 1875, sé Patent af 28 Juli 1875.
- Serbien:** Handelsdeklaration af 1909, jvf. Bkg. Nr. 160 af 28 Juni 1910.
- Siam:** Traktat af 1858, sé Patent af 3 Februar 1860, jvf. Bkg. Nr. 120 af 7 April 1906.
- Spanien:** Traktat af 1893, sé Bkg. Nr. 157 af 10 August 1894.
- Storbritannien:** Handelskonvention af 16 Juni 1824.
- Syerig:** Traktat af 2 November 1826.
- Tripolis:** Traktat af 22 Januar 1752, jvf. Kom. Koll. Prom. af 22 Juli 1797.
- Tunis:** Deklaration af 1897, sé Bkg. Nr. 9 af 25 Januar 1897.
- Tyrkiet:** Traktat af 1862, sé Patent af 25 Juni 1862.
- Venezuela:** Traktat af 1862, sé Patent af 10 August 1863.
- Østrig-Ungarn:** Konvention af 1887, sé Bkg. Nr. 102 af 23 Juni 1887.

## Færøerne. Island. Grønland. De dansk-vestindiske Øer.

I. Paa Færøerne gælde i Hovedsagen samme Retsregler som i det øvrige Danmark. Øerne have siden 1852 været repræsenterede paa den danske Rigsdag, hvorfor enhver siden da udkommen dansk Lov maa antages uden videre at være gældende paa Færøerne, naar den ikke udtrykkelig bestemmer det modsatte. Imidlertid ende de danske Love undertiden med en Paragraf om, at Loven ikke skal gælde for Færøerne, ligesom det ved Love af mere omfattende Karakter ikke er ualmindeligt, at Loven bemyndiger Regeringen til at sætte den i Kraft paa Færøerne med de Lempelser, som ifølge disse Øers særegne Forhold maatte findes hensigtsmæssige. Saaledes er f. Ex. Konkursloven først sat i Kraft paa Færøerne ved en Anordning af 13 Februar 1873, jvf. Anordning Nr. 72 af 2 Maj 1902, og Anordning Nr. 249 af 14 November 1908. Fimaloven ved Anordning Nr. 21 af 7 Februar 1890 og Soloven ved Anordning Nr. 203 af 4 November 1892, jvf. Bkg. Nr. 92 af 5 April 1906. Derimod maa f. Ex. Vekselloven og Loven om Køb være direkte gældende for Færøerne.

- China:** Treaty of 1863; see Letters Patent of 12 November 1864.
- Congo:** General Act of 26 February 1885, containing the resolutions adopted at the International African Conference in Berlin; see Publication No. 140 of 8 August 1885. Convention of 1885 with the international Congo Company; see Publication No. 167 of 14 September 1885.
- Corea:** Treaty of 1902; see Publication No. 208 of 19 November 1903.
- Liberia:** Treaty of 1869; see Letters Patent of 7 April 1865.
- Morocco:** Convention of 1880; see Letters Patent No. 110 of 23 June 1881.
- Mecklenburg-Schwerin:** Convention of 25 November 1845.
- Mexico:** Commercial and Navigation Convention of 1910; see Publication No. 236 of 11 November 1910.
- Monaco:** Treaty of 1845; see Placard of 25 October 1845.
- Netherlands:** Treaty of 15 June 1701; see Royal Order of 14 January 1732 and Declaration of 10 July 1817.
- United States of North America:** Convention of 26 April 1826; see Convention of 11 April 1857, Art. 5.
- Norway:** Treaty of 2 November 1826.
- Oldenburg:** Declaration of 31 March 1841.
- Paraguay:** Convention of 1904; see Publication No. 173 of 12 October 1904.
- Persia:** Treaty of 1857; see Letters Patent of 24 September 1859.
- Portugal:** Declaration of 1896; see Publication No. 9 of 2 February 1898.
- Prussia:** Treaty of 17 June 1818; see Convention of 26 May 1846.
- Rumania:** Commercial and Navigation Convention of 1910; see Publication No. 159 of 22 June 1910.
- Russia:** Treaty of 1895; see Publication No. 88 of 3 April 1895.
- Sandwich Islands:** Treaty of 19 October 1846.
- Switzerland:** Treaty of 1875; see Letters Patent of 28 July 1875.
- Servia:** Commercial Declaration of 1909; see Publication No. 160 of 28 June 1910.
- Siam:** Treaty of 1858; see Letters Patent of 3 February 1860, compare Publication No. 120 of 7 April 1906.
- Spain:** Treaty of 1893; see Publication No. 157 of 10 August 1894.
- Great Britain:** Commercial Convention of 16 June 1824.
- Sweden:** Treaty of 2 November 1826.
- Tripoli:** Treaty of 22 January 1752; see Promemoria of the Commercial Collegium of 22 July 1797.
- Tunis:** Declaration of 1897; see Publication No. 9 of 25 January 1897.
- Turkey:** Treaty of 1862, see Letters Patent of 25 June 1862.
- Venezuela:** Treaty of 1862; see Letters Patent of 10 August 1863.
- Austria-Hungary:** Convention of 1887; see Publication No. 102 of 23 June 1887.

## The Færøe Islands. Iceland. Greenland. The Danish Islands in the West Indies.

I. In the **Farøe Islands** the same legal rules are in the main applicable as in the rest of Denmark. Since 1852 the Islands have been represented in the Danish Rigsdag, for which reason every Danish Law subsequently enacted is considered *ipso facto* to apply to the Farøe Islands, unless it contains an express provision to the contrary. The Danish Laws, however, sometimes conclude with an article providing that the Law in question shall not apply to the Farøe Islands, and similarly in the case of Laws of a more general nature, it is not unusual for the Law in question to authorise the Government to apply it to the Farøe Islands, subject to the modifications which, owing to the special conditions of these islands, may be considered appropriate. Thus it occurred, for example, that the Bankruptcy Act did not come into force in the Farøe Islands until an Ordinance of 13 February 1873 (see Ordinance No. 72 of 2 May 1902, and Ordinance No. 249 of 14 November 1908), made it applicable there, the Firms Act came into force in the Farøe Islands by Ordinance No. 21 of 7 February 1890, and the Maritime Law by Ordinance No. 203 of 4 November 1892; see Publication No. 92 of 5 April 1906. On the other hand, for example, the Bills of Exchange Act and the Purchase and Sales Act applied to the Farøe Islands immediately.

Endvidere maa fremhæves, at Udkast til Love, der vedkomme Færoerne af Regeringen kunne forelægges til Betænkning for det ved Lov af 26 Marts 1852 oprettede færøiske Lagthing, hvilket ogsaa er berettiget til at fremlægge Forslag til nye Love, sé Lov om Lagthinget af 15 April 1854, § 11. Denne sidste Lov er iøvrigt delvis ændret ved Lov Nr. 77 af 3 April 1906.

II. Island er i forfatningsmæssig Henseende en Del af det danske Rige med særlige Landsrettigheder, idet de Island vedrørende særlige Forhold henhøre under en Lovgivningsmagt, bestaaende af Kongen i Forening med den i Reykjavik hvert andet Aar sammentrædende islandske Folkerepresentation, Altinget.

Hvilke Anliggender der henhøre under denne særlige islandske Lovgivningsmyndighed er nærmere bestemt ved Lov 2 Januar 1871 om Islands forfatningsmæssige Stilling i Riget (Lovtidende 1871, S. 1), hvorefter navnlig er henregnet til de særlige Anliggender:

Den borgerlige Ret og Strafferetten med tilhørende Retspleje, dog at Højesteret i København er overste Instans i islandske Sager, endvidere Næringsvæsenet, Skole- og Lægevæsenet, kort sagt hele Styrelsen af Landets indre Forhold, derunder ogsaa Landets Finansvæsen.

Som almindelige Anliggender, henhørende under den danske Lovgivningsmagt, kan derimod nævnes Forholdet til Udlandet, Hær og Flaade, Bestemmelsen af Statsborger- og Indfodsretsforhold, o. l.

Island er ikke repræsenteret i den danske Rigsdag og yder intet Bidrag til Rigets almindelige Fornødenheder.

Den forfatningsmæssige Ordning af de særlige Anliggender er bestemt ved de to Forfatningslove for Island af 5 Januar 1874 (Lovtidende 1874, Tillæg, S. 1) og 3 Oktober 1903 (Lovtidende 1903, Tillæg, S. 51), hvorefter Ordningen er konstitutionel, saaledes at Kongen udøver sin Myndighed i Lovgivning og Forvaltning igennem en overfor Altinget ansvarlig særlig Minister for Island; efter sidstnævnte Forfatningslov har denne og Islands Ministerium sit Sæde i Reykjavik, men Ministeren skal forelægge Kongen Love og vigtige Regeringsforanstaltninger i det ved den danske Grundlov ordnede Statsraad.

Handelsret. De islandske Lovregler om Handel er væsensforskellige fra de danske, forsaavidt angaar de næringsretlige Regler, som i Hovedsagen ere ordnede ved Frdn. ang. den islandske Handel og Skibsfart af 13 Juni 1787 (Schous Frdn. 1787, S. 276), Lov 15 April 1854 om samme Æmne (Algren-Ussings Lovsamling 1854, S. 495), Lov om Forandring af de ældre Love herom af 7 November 1879 (Lovtidende 1879, Tillæg S. 73) og Lov om Spekulanthandel af 2 December 1887 (Lovtidende 1887, Tillæg S. 82).

Nogen civilretlig Handelslov findes ikke paa Island, og den danske Lov om Køb af 6 April 1906 er ikke optaget i den islandske Lovgivning. Civilretlige Handelsmellemværender afgøres efter almindelige Retsgrundsætninger om Viljeserklæringers forbindende Kraft og efter Retssædvane, i hvilken Henseende der dog paa Grund af den indenlandske Handels ringe Omfang ikke har udviklet sig specielle sædvansmæssige Regler for Handlende. Da imidlertid det oprindelige civilretlige Retsgrundlag er fælles for Danmark og Island, vil de danske Retsprinciper og Regler i vidt Omfang være overensstemmende med islandske Retsgrundsætninger, f. Ex. de i fornævnte Lov om Køb indeholdte Principer vedrørende Ansvar for Mangler ved Ydelsen, Vanhjæmmel m. v. Ligeledes er Reglerne om Myndighed til at indgaa Retshandler stemmende med de danske. — Ifølge islandsk Lov om Hævd af 10 November 1905 (Lovtidende 1905 Tillæg S. 194) er danske Hævdprinciper bragt til Anvendelse, dog er Hævdstiden for Løsøre 10 Aar. — Derimod hjemler Lov om Forældelse af Fordringsretligheder af 20 Oktober s. A. (ibid. S. 101) væsentlig andre Præskriptionsregler end de danske, idet bl. a. Præskriptionsfristen er afhængig af Kravets Beskaffenhed; Gjæld opstaaet af Handelsmellemværende vil i Almindelighed forældes i 4 Aar.

Fornævnte Frdn. 13 Juni 1787, II, §§ 17 og 18 hjemler Pligt for Handlende til at føre Handelsbøger, men de nærmere Regler herom i dansk Ret er ikke

Further, it must be pointed out that projects of Laws relating to the Faröe Islands may be submitted by the Government for consideration to the Lagthing of the Faröe Islands established by Act of 26 March 1852, which is also authorised to present projects of new Laws; see Act concerning the Lagthing of 15 April 1854, § 11. This latter Act, however, has in part been modified by Act No. 77 of 3 April 1906.

II. **Iceland**, in so far as her constitution is concerned, is part of the Kingdom of Denmark, with special rights of its own; the special conditions obtaining in Iceland are subject to a legislative power consisting of the King in conjunction with the Althing, the Icelandic Parliament which meets at Reykjavik every two years.

The Act of 2 January 1871, regarding Iceland's constitutional position in the Kingdom, has settled in detail (Legal Gazette, 1871, p. 1) what matters are subject to this special Icelandic legislative power, amongst which notably the following are mentioned as special matters for Iceland:

The *civil law* and the *criminal law*, with the auxiliary judicial administration, subject, however, to the Supreme Court of Copenhagen as the Court of last instance in Icelandic matters; further that which concerns trades, schools and the medical profession; in short, the entire administration of the home affairs of the Island, including also its finances.

As general matters, subject to the Danish legislature on the other hand, must be mentioned all relations with foreign countries, the army and navy, the regulations in regard to the rights of citizens and natives, etc.

Iceland is not represented in the Danish Rigsdag and yields no contribution towards the general necessities of the Kingdom.

The *constitutional arrangement of the special matters* has been enacted in the two Constitutional Acts pertaining to Iceland of 5 January 1874 (Legal Gazette 1874, Supplement, p. 1) and 3 October 1903 (Legal Gazette 1903, Supplement, p. 51), according to which the arrangement is a constitutional one, to the effect that the King exercises his legislative and administrative power by means of a special Minister for Iceland, who is responsible to the Althing; in accordance with the last mentioned Constitution Act this Minister and the Ministry of Iceland reside at Reykjavik, but the Minister must submit laws and important administrative measures to the King in the Council of State established according to the Danish Constitution.

*Commercial Law.* The Icelandic legal rules relating to commerce are fundamentally different from the Danish, in so far as concerns the *legal rules of trade*, which in the main have been regulated by the Ordinance concerning Icelandic Commerce and Shipping of 13 June 1787 (Schon's Ordinance 1787, p. 276), by the Act of 15 April 1854 on the same subject (Collection of laws, edited by Algren-Ussing, 1854, p. 495), the Act concerning the modification of the older Acts on the same matter of 7 November 1879 (Legal Gazette, 1879, Supplement p. 73) and the Act concerning hazardous trade of 2 December 1887 (Legal Gazette 1887, Supplement p. 82).

There is no commercial law forming part of the civil law in Iceland, and the Danish Purchase and Sale Act of 6 April 1906 has not been passed by the Icelandic legislature. Commercial transactions subject to civil law are determined according to the ordinary legal principles as to the binding force of the manifestations of intention, and according to legal practice; in this respect, owing to the limited extent of the home trade, no special conventional rules for traders have been developed. As, however, the original fundamental basis of the civil law is common for Denmark and Iceland, the Danish legal principles and rules to a large extent coincide with the Icelandic legal maxims; for example, the principles contained in the Purchase and Sale Act aforesaid concerning the responsibility as regards defects of the object sold, insufficient title, etc. The rules concerning capacity to conclude legal transactions also agree with the Danish rules. — According to the Icelandic Act concerning prescription of 10 November 1905 (Legal Gazette 1905, Supplement p. 194), the Danish principles of prescription have been applied to Iceland; the period of prescription in respect of movables is, however, ten years. — On the other hand, the Act concerning limitation of actions for claims of 20 October of the same year (*ibid.* p. 101) provides rules of limitation essentially different from the Danish, the period of limitation being, for example, dependent on the nature of the claim; debts resulting from commercial transactions generally become barred in four years.

The aforesaid Ordinance of 13 June 1787, II, §§ 17 and 18, enacts the obligation for traders to *keep commercial books*, but the detailed rules on this matter in Danish

udvidede til Island, jvf. dog Straffebestemmelsen i den isl. Straffelov 25 Juni 1869 § 264.

Ved Lov 13. November 1903 om Handelsregistre, Firma og Prokura (Lovtidende 1903, Tillæg S. 139) er dansk Lovgivnings Regler herom i det hele overført til Island, og det samme gælder om Varemærkelovgivningen i Henhold til Lov om Varemærker af s. D. (ibid. S. 147).

Derimod er ikke hjemlet Beskyttelse for Mønstre, og Patentvæsnets er ikke lovordnet, men ved Praksis er hjemlet Udstedelse af Eneretsbevillinger efter tildels lignende Regler som i Danmark.

Lov Nr. 62 af 16 November 1907 handler om metrisk System for Maal og Vægt.

Konkursretten. De islandske Regler om Konkurs indeholdes dels i Lov 12 April 1878 om Skifte af Dødsbo og Fællesbo m. v. (Lovtidende 1878, Tillæg S. 36), jfr. sammes § 90, dels i Lov 13 April 1894 om forskellige Punkter vedrørende Konkurs (Lovtidende 1894, Tillæg S. 25). Disse Love er helt igennem byggede paa den danske Konkurslov af 25 Marts 1872, hvis Regler dog i betydelig Grad er simplificerede som Følge af den mindre kommercielle Udvikling paa Island; dette gælder navnlig den formelle Konkursret, medens derimod de materielle Regler er væsentlig de samme, saaledes navnlig Reglerne om Konkursens Indflydelse paa Retshandler, Afkræftelse, Adgang til Modregning, Konkursordenen m. v.

Regler om Akkord under en Konkurs findes dog ikke i den islandske Lovgivning, lige saa lidt som der er hjemlet Adgang til Tvangsakkord udenfor Konkurs.

De Regler om Pant, som indeholdes i den danske Konkurslovs Kapitel 17, er i det væsentlige overførte til Island ved Lov 4 November 1887 om Pant (Lovtidende 1887, Tillæg S. 51). De Ændringer, som efter 1894 er foretagne i den danske Konkurslovgivning, er derimod ikke overførte til Island.

Vexelretten m. v. Vexellov for Island af 13 Januar 1882 (Lovtidende 1882, Tillæg S. 3) indholder ganske samme Regler for Vexler som den danske Vexellov af 7 Maj 1880, dog at i § 19 jfv. § 32 Fristen for Forevisning til Akeep og til Betaling altid er 1 Aar, medmindre Vexlen er trukken i Island og skal betales sammesteds; lignende Ændring er foretaget i §§ 78 og 79 om Beregning af Præskriptionsfristerne.

Vexler er ikke stempelplichtige paa Island, idet stemplet Papir ikke er i Brug sammesteds.

Lov s. D. om Vexelsager og Vexelprotester (ibid. S. 20) giver i det hele samme Regler herom som den danske Lov om samme Æmne af 28 Maj 1880.

Lov 8 November 1901 om Checks (Lovtidende 1901, Tillæg S. 128) indeholder samme Regler om Checks som den danske Lov om Checks og andre Sigtanvisninger af 23 April 1897; sidstnævnte Lovs § 16 om andre Sigtanvisninger er ikke medtaget i den islandske Lov, ej heller § 17 om Stempelplichten.

Søret. Lov om Skibes Registrering af 13 Decembris 1895 (Lovtidende 1895, Tillæg S. 88) giver offentligretlige Regler om Skibsregistrering i Hovedsagen svarende til Bestemmelserne i den danske Registreringslov af 1 April 1892; jvf. endvidere Lov Nr. 40 af 16 November 1907 om Pant i Skibe (Lovtidende 1907, Tillæg S. 151).

Af særlige Regler af offentligretligt Indhold fremhæves:

Ifølge Lovens § 1 tilkommer Retten til at faa Skib indregistreret paa Island foruden Personer med dansk Indfødsret alle dem, som ere blevne danske Statsborgere ved at erholde fast Hjem i Danmark eller Island, uden at hertil som efter dansk Ret kræves 5 Aars Bosættelse.



law have not been extended to Iceland; see, however, the provision as to penalties in the Icelandic Penal Code of 25 June 1869, § 264.

The Act of 13 November 1903, concerning *commercial registers, firms and proxies* (Legal Gazette 1903, Supplement p. 139) provides that the rules of the Danish legislation on this matter shall in general be applied to Iceland, and the same holds good in regard to the legislation concerning *trade marks* according to the Act concerning trade marks of the same date (*ibid.* p. 147).

On the other hand, protection has not been accorded by law to designs, and matters relating to patents have not been regulated by law, but, in practice, the concession of patents is granted according to rules in part similar to those obtaining in Denmark.

Act No. 62 of 16 November 1907 deals with the metrical system of measure and weight.

*Bankruptcy Law.* The Icelandic regulations regarding bankruptcy are contained partly in the Act of 12 April 1878 *regarding the division of inheritances and joint estates, etc.* (Legal Gazette 1878, Supplement p. 36); see § 90 of the same Act; partly in the Act of 13 April 1894 *regarding various points concerning bankruptcy* (Legal Gazette 1894, Supplement p. 25). These Acts have all through been based on the Danish Bankruptcy Act of 25 March 1872, the provisions of which, however, have been much simplified owing to the lesser commercial development of Iceland; this in particular applies to the *formal* bankruptcy law, whereas, on the contrary, the *material* provisions in the main are the same, especially the provisions as to the effect of bankruptcy on legal transactions, their annulment, the right of set-off, the ranking of claims on bankruptcy estates, etc.

Regulations as to composition during bankruptcy have, however, not been enacted in the Icelandic legislation, nor has permission been authorised to grant a composition in the case of estates which have not been subjected to bankruptcy.

The provisions concerning pledges and mortgages which are contained in Chapter 17 of the Danish Bankruptcy Act, have in the main been applied to Iceland according to the Act of 4 November 1887 concerning pledge (mortgage), (Legal Gazette 1887, Supplement p. 51). On the other hand, the alterations which have been made since 1894 in the Danish laws bearing on bankruptcy, have not been applied to Iceland.

*Law of Bills of Exchange, etc.* The *Bills of Exchange Act for Iceland of 13 January 1882*, (Legal Gazette 1882, Supplement p. 3) contains precisely the same provisions in regard to bills of exchange as the Danish Bills of Exchange Act of 7 May 1880, except that, according to § 19 (compare § 32), the period for presentation for acceptance and payment is always one year, unless the bill of exchange in question has been drawn in Iceland and is payable there, and similar modifications have been made in §§ 78 and 79 concerning the calculation of the periods of prescription.

Bills of exchange are not subject to stamp duty in Iceland, stamped paper not being used there.

The Act of the same date concerning *recourse and protests in regard to bills of exchange* (*ibid.* p. 20) in the main contains the same provisions regarding this matter as the Danish Act on the same subject of 28 May 1880.

*The Act of 8 November 1901 concerning Cheques* (Legal Gazette 1901, Supplement p. 128) contains the same provisions in regard to cheques as the Danish Act dealing with cheques and other drafts payable at sight of 23 April 1897; § 16 of the last mentioned Act on other drafts payable at sight has not been included in the Icelandic Act, nor has § 17 on stamp duty.

*Maritime Law.* The *Act of 13 December 1895 regarding the registration of ships* (Legal Gazette 1895, Supplement p. 88) contains regulations of public law in regard to the registration of vessels in the main corresponding to the provisions of the Danish Registration Act of 1 April 1892; compare, further, the Act No. 40 of 16 November 1907 regarding mortgages on vessels (Legal Gazette 1907, Supplement p. 151).

Amongst special rules appertaining to public law may be pointed out:

According to § 1 of the Act, the right to have vessels registered in Iceland is accorded, in addition to persons having the Danish native's right, to all those who have become Danish citizens by establishing a permanent residence in Denmark or Iceland, without five years' residence being required for this purpose, as in the case of Danish law.

Paa Skibsregistre, hvis Indretning er simplificeret ved Udeladelse af de civilretlige Regler, optages kun Skibe paa mindst 30 Reg. Tons Brutto, Lovens § 2.

Alle paa Island registrerede Skibe optages paa Hovedregistret i Registrerings- og Skibsmaalingsbureauet i København, Lovens § 4.

Ved Frdn. for Island angaaende Skibes Maaling af 25 Juni 1869 (Algren-Ussing: Love og Anord. 1869 S. 416) er den danske Lov om Skibes Maaling af 13 Marts 1867 med enkelte Lempelser udvidet til Island.

Den danske Solov af 1 April 1892 er ikke udvidet til Island, men flere af de i den behandlede Æmner omfattes af den islandske Lov vedrørende Søfarten af 22 Marts 1890 (Lovtidende 1890, Tillæg S. 25), affattet med ældre danske Soretsbestemmelser som Forbillede og indeholdende Regler 1. om Journalforing, 2. om Forhyring af Sofolk m. m., 3. om Mønstring af Skibsmandskab, og 4. udførlige Regler om Disciplin i Skibe, derunder om Søfolks Forseelser, Mandskabets Retligheder m. v.

Af de øvrige i den danske Solov behandlede Æmner findes ikke paa Island positiv Lovgivning om Rederi, Befragtning (Konossementer), Bodmeri, Havari og Soforsikring, ej heller civilretlige Bestemmelser om Skade ved Sammenstod.

Om Bjærgelon indeholdes nogle Regler i den islandske Strandingslov af 14 Januar 1876 (Lovt. 1876 Tillæg S. 6), affattet paa Grundlag af ældre dansk Lovgivning om samme Æmne og med Anvendelse af lignende Hovedprinciper, som følges af den nugældende danske Lovgivning, navnlig m. Hens. t. Beskyttelse mod ubillige Bjærgningskontrakter, men iøvrigt med adskillige specielle Regler.

Lov om Sonæringen af 10 November 1905 (Lovtidende 1905, Tillæg S. 202) giver Regler om Sonæringsforhold med den danske Sonæringslov af 25 Marts 1892 som Forbillede, dog med lempeligere og simplificerede Bestemmelser i forskellige Henseender; Reglerne om Maskinbetjeningen paa Dampskibe fastsættes af Islands Ministerium ved Regulativ for hvert enkelt Skib.

Ved kgl. Anordning af 26 September 1890 (Lovt. 1890, Till. S. 89) er de internationale Sovejsregler bragt til Anvendelse paa islandske Fartøjer, jfr. Adg. 11 December 1906 (Lovt. 1906, Tillæg S. 88).

Bkg. 7 Januar 1907 (Lovt. 1907, Tillæg S. 2) omhandler Islands Tiltrædelse til den internationale Telegrafkonvention: Under 16 November 1907 (ibid. S. 215) er givet en Postlov, og under 22 November s. A. (ibid. S. 323) en Lov om Handelsrejsende m. fl.

Under 30 Juli 1909 (Lovt. 1909, Tillæg S. 132) en Lov om Handelsbetjentes Læretid og under samme Dato (ibid. S. 135) en Lov om Handelsbøger.

III. Handlen paa den danske Koloni Grønland har siden 1774 været dreven som Monopol for den danske Stats Regning under Navnet „Den kongelige grønlandske Handel“.

For alle ikke Indfødte og for de indfødte Grønlandere, der staa i den grønlandske Handels eller Missions Tjeneste, gælder dansk Ret, jvf. i øvrigt Lov Nr. 139 af 27 Maj 1908 om Styrelsen af Kolonierne i Grønland m. m.

IV. Paa de dansk-vestindiske Øer (St. Thomas, St. Croix og St. Jan) blev dansk Ret indført ved Anordning 31 Marts 1755, § 3, og indtil 1821 blev alle danske Love ogsaa gældende i dansk Vestindien, naar de ikke selv indeholdt en modsat Bestemmelse.

Resolution 6 Juni 1821 ordnede Forholdet saaledes, at for Fremtiden skulde Kancelliet være bemyndiget til, naar en for Danmark udgiven almindelig Anordning utvivlsomt maatte anses anvendelig i dansk Vestindien, da at foranstalte den lovlige bekendtgjort der til Efterlevelse; skulde derimod Forandring foretages i Løven, maatte Sagen forestilles Kongen.

In the registers of vessels, the arrangements of which have been simplified by omitting the provisions of the civil law, only vessels of at least 30 gross register tons are admitted; § 2 of the Act.

All vessels registered in Iceland are recorded in the principal register of the office for registration and measurement of vessels in Copenhagen; § 4 of the Act.

The Danish Act concerning the measurement of vessels of 13 March 1867, with a few modifications, has been applied to Iceland, by the *Ordinance for Iceland regarding the measurement of vessels of 25 June 1869* (Algren-Ussing: Laws and ordinances 1869, p. 416).

The Danish Maritime Act of 1 April 1892 has not been applied to Iceland, but several of the subjects dealt with in it have been adopted in the *Icelandic Shipping Act of 22 March 1890* (Legal Gazette 1890, Supplement p. 25), enacted on the model of ancient Danish maritime regulations and containing rules: 1. regarding the keeping of log-books, 2. regarding the hire of seamen, etc., 3. regarding the inspection of crews, and 4. detailed regulations with regard to the discipline on board, including offences committed by seamen, the rights of crews, etc.

As to the other subjects dealt with in the Danish Maritime Law, there is in Iceland no positive legislation concerning shipowners, affreightment (bills of lading), bottomry, average and maritime insurance, nor are there any provisions of civil law in regard to damage caused by collision.

Concerning the charges for salvage there are some provisions contained in the *Icelandic Wreck Act of 14 January 1876* (Legal Gazette 1876 Supplement p. 6), enacted on the basis of ancient Danish legislation relative to the same subject, and applying similar main principles to those which are followed by the Danish legislation in force, particularly in regard to the protection against unfair salvage contracts, but in general containing various special regulations.

The *Maritime Trades Act of 10 November 1905* (Legal Gazette 1905, Supplement p. 202) contains regulations concerning the carrying on of maritime trade, enacted on the basis of the Danish Maritime Trades Act of 25 March 1892 as a model, containing, however, provisions which are more lenient and simple in various respects; the rules as to the engine service on board vessels are fixed by the Ministry of Iceland by means of regulations for every single vessel.

According to the *Royal Ordinance of 26 September 1890* (Legal Gazette, Supplement p. 89) the international seafaring regulations have been applied to Icelandic vessels; see Ordinance of 11 December 1906 (Legal Gazette, Supplement p. 88).

The Publication of 7 January 1907 (Legal Gazette 1907, Supplement p. 2) treats of Iceland joining the *International Telegraph Convention*. On 16 November 1907 (*ibid* p. 215) a *Post Act* and on 22 November of the same year (*ibid* p. 323), an Act concerning commercial travellers, etc., were passed.

On 30 July 1909 (Legal Gazette 1909, Supplement p. 132) an Act was passed concerning the *apprenticeship of commercial apprentices* and on the same date (*ibid*. p. 135) an Act concerning *commercial books*.

III. The trade in the Danish colony of **Greenland** has since 1774 been carried on as a monopoly for the account of the Danish State under the name of "The Royal Trade in Greenland".

To all persons who are not natives and to the natives of Greenland engaged in the service of the trade or mission of Greenland, Danish law applies; compare also Act No. 139 of 27 May 1908 regarding the administration of the colonies in Greenland, etc.

IV. In the **Danish Islands in the West Indies** (*St. Thomas, St. Croix and St. Jan*) Danish law was introduced by the Ordinance of 31 March 1755, § 3, and up to 1821 all Danish Laws were applicable to the Danish West Indies, if they themselves did not contain any provision to the contrary.

The Resolution of 6 June 1821 arranged that from that time the Chancery, when a general Ordinance issued in and applicable to Denmark was undoubtedly to be considered as applicable to the Danish West Indies, should be authorised to see that such Ordinance was legally published there for observance; if, on the contrary, modifications were to be made in a Law, such Law had to be submitted to the King.

Ved Lov 26 Marts 1852 oprettedes et Kolonialraad med raadgivende Myndighed.

Ifølge den senere Koloniallov af 27 November 1863 (i sin ved flere Tillægslove ændrede Skikkelse foreligger den nu som Koloniallov for de dansk-vestindiske Oer Nr. 124 af 6 April 1906) oprettedes der to Kolonialraad, et for St. Croix og et for St. Thomas og St. Jan, og Forholdet blev derefter følgende:

I Sager, der udelukkende vedrøre Forhold indenfor Oerne, udøves med enkelte Undtagelser den lovgivende Magt, forsaavidt der ikke findes Anledning til paa sædvanlig Maade at udgive en Lov (d. v. s. en af Kongen og den danske Rigsdag vedtagen Lov), af Kongen og vedkommende Kolonialraad i Foræning gennem Anordninger, der dog skulle fremlægges for Rigsdagen i den nærmest paafølgende Samling. Findes der Anledning til at udgive en egentlig Lov, eller er en saadan nødvendig, sker dette ved Kongerigets Lovgivningsmagt, dog skal der, forinden nogen Lov, indeholdende Bestemmelser, der særlig vedkomme de dansk-vestindiske Oer, udgives, saa vidt muligt gives vedkommende Kolonialraad Lejlighed til at udtale sig derom.

I de senere Aar er der udstedt en Del egentlige Love særlig vedrørende dansk Vestindien, af hvilke skal fremhæves Montlov Nr. 49 af 29 Marts 1904 for Dansk Vestindien med Tillægslov Nr. 41 af 1 April 1905, Lov Nr. 50 af 29 Marts 1904 om en dansk-vestindisk Seddelbank samt Lov Nr. 109 af 6 April 1906 om et dansk Koloniallotteri.

Nævnes skal ogsaa Adg. (Nr. 15) af 6 Juli 1906 om Forpligtelsen til i Dansk Vestindien at holde behørig Handelsbøger og Adg. (Nr. 6) af 1 April 1910 om Beskyttelse for Varemærker paa de dansk vestindiske Oer.

I det hele befinder den dansk-vestindiske Lovgivning sig dog paa et ret forældet Standpunkt, og hverken den danske Konkurslov, Vexellov, Solov eller Lov om Køb er udvidet til Dansk Vestindien.

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According to the Act of 26 March 1852, a Colonial Council with advisory competence was established.

According to the subsequent *Colonial Act* of 27 November 1863 (owing to several supplementary Acts, it now operates under the title of the *Colonial Act applicable to the Danish Islands in the West Indies*, No. 124 of 6 April 1906), two colonial councils were established, one for St. Croix and one for St. Thomas and St. Jan, according to which the following arrangements obtain:

In matters exclusively concerning the internal conditions of the Islands, the legislative power, subject to certain exceptions, provided there is no occasion to enact a Law in the ordinary way (i.e. a Law enacted by the Danish Rigsdag and sanctioned by the King), is exercised by the King in conjunction with the competent Colonial Council by means of Ordinances, which, however, must be submitted to the Rigsdag for ratification in its next following session. If there is occasion to enact a regular Law, or if one is indispensable, such enactment takes place by means of the legislature of the Kingdom, but before any Law containing provisions which specially concern the Danish Islands in the West Indies is enacted, the competent Colonial Council must, as far as possible, be given the opportunity of giving its opinion in the matter.

During the later years some regular Laws specially dealing with the Danish West Indies have been enacted, amongst which should be mentioned the Coinage Act No. 49 of 29 March 1904 for the Danish West Indies, with Supplementary Act No. 41 of 1 April 1905, Act No. 50 of 29 March 1904 concerning a Danish West Indian Note Bank, and Act No. 109 of 6 April 1906 concerning a Danish Colonial Lottery.

The Ordinance (No. 15) of 6 July 1906 regarding the obligation to duly keep commercial books in the Danish West Indies, and the Ordinance (No. 6) of 1 April 1910 concerning the protection of trade marks in the Danish West Indies, should also be mentioned.

The legislation of the Danish West Indies is, however, generally speaking, more or less obsolete, and neither the Danish Bankruptcy Act, Bills of Exchange Act, Maritime Act nor Purchase and Sale Act have been applied to the Danish West Indies.

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**NORDISK  
(DANSK, NORSK,  
SVENSK)  
VEXEL- OG SØRET**

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OG

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**SCANDINAVIAN  
(DANISH, NORWEGIAN,  
SWEDISH)  
BILLS OF EXCHANGE  
AND MARITIME LAWS**

BY

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# I

**DANMARKS,  
NORGES OG SVERIGES  
VEXELRET**

**LAW OF BILLS OF EX-  
CHANGE OF DENMARK,  
NORWAY AND SWEDEN.**

BEARBEIDET

COMPILED

AF

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## Indledende Bemærkninger over den nordiske Vexel- og Solovgivning.<sup>1)</sup>

Omtrent samtidig med den politiske Bevægelse, der førte til den danske Konstitution af 1849, rejstes en skandinavisk Bevægelse med det Formaal at nærme de tre nordiske Lande mest muligt til hinanden og lette det indbyrdes Samkvem. Allerede i 1839 holdtes det første skandinaviske Naturforskersmøde, og dette er senere lige op til Nutiden efterfulgt af en stor Række andre fælles-nordiske Møder: Studentermøder, nationaløkonomiske Møder, Skolemøder, Juristmøder, Filologmøder, Sofarts- og Handelsmøder m. fl. Der er afholdt fælles-nordiske Udstillinger og Fester, grundlagt en Del fælles-nordiske videnskabelige Tidsskrifter — hvoriblandt nordisk Tidsskrift for Fængselsvæsen og praktisk Strafferet (1878) og Nordisk Tidsskrift for Retsvidenskab (1888), videre fra den senere Tid en skandinavisk Forsikringstidende („Assurandøren“, 1896), en aarlig udkommende Samling af nordiske Domme i Sofartsanliggender (1900) og et Nordisk Tidsskrift for Retsmedicin og Psykiatri (1902). Desforuden er der udarbejdet en nordisk Retsencyklopædi (8 Bind).

Af stor praktisk Betydning er dernæst det Fællesskab indenfor vigtige Grene af Lovgivningen, der efterhaanden er opnaaet navnlig paa Grundlag af fælles-nordiske Kommissioners Arbejde. I 1861 vedtoges saaledes, at danske Domme skulde kunne eksekveres i Sverige og svenske i Danmark. I 1873 vedtoges fælles Montvæsen for alle 3 Riger, og senere har Norge og Sverige faaet ensartet Maal og Vægt. I 1880 vedtoges en fælles-nordisk Vexellov, og dertil er senere kommet i det væsentlige ensartede Varemærke- og Patentlove, Love om Firma, Handelsregistre og Prokura. Sølve og Checklove. Ogsaa til Lovgivningen om Livsforsikringsselskaber foreligger der fælles Forarbejder og Udkast, der allerede i Danmark og Sverige er vedtagne som Love; danske og norske fælles Forarbejder og Udkast til en almindelig Lov om Præskription har imidlertid kun ført til en norsk Lov derom. Endelig har en fælles-nordisk Civillovkommission som første Resultat af sin Virksomhed i 1903 fremlagt et Udkast til en fælles-nordisk Lov om Køb; Udkastet er i 1905 vedtaget i Sverige som Lov og i 1906 i Danmark.

De tre skandinaviske Landes Vexel- og Sølve er saa lige — Vexellovene er ganske og Sølvene for Størstedelen overensstemmende, — at det kun vilde være

<sup>1)</sup> Gengivelsen af den nordiske Vexel- og Checklovgivning er besørget af Kriminalretsassessor Dr. Tyb j e r g, men er for Norges og Sverigs Vedkommende paa enkelte Punkter suppleret af Høiesteretsassessor H a m b r o og Dr. Å s t r ö m. Gengivelsen af den nordiske Solovgivning er besørget af Høiesteretsassessor H a m b r o, medens Særbemærkningerne vedrørende den norske, danske og svenske Soret hidrøre fra henholdsvis Assessor H a m b r o, Dr. Tyb j e r g og Dr. Å s t r ö m.

## Introductory remarks on the Scandinavian legislation concerning bills of exchange and maritime matters.<sup>1)</sup>

At about the same period as the political movement which resulted in the Danish Constitution of 1849, a Scandinavian movement having in view a maximum of concord between the three Scandinavian countries and the smooth working in their reciprocal intercourse was initiated. Already in 1839 the first congress of Scandinavian naturalists was held, a congress which up to the present day has been succeeded by a long series of inter-Scandinavian congresses: congresses of students, political economists, school teachers, lawyers, linguists and congresses for the discussion of maritime and commercial matters, etc. Inter-Scandinavian exhibitions and festivals have been held, some inter-Scandinavian scientific Reviews have been started — amongst which we mention the Scandinavian Review for matters relating to Prisons and practical Penal Law (1878), the Scandinavian Review of Jurisprudence (1888), and more recently a Scandinavian Insurance Review ("The Insurer", 1896), a collection of judgments in maritime matters which (from 1900) is published annually, and a Scandinavian Review of Forensic Medicine and Psychiatry (1902). In addition there has been published an Encyclopædia of Scandinavian Law and Jurisprudence (8 volumes).

The uniformity in important branches of legislation which has gradually been brought about on the basis of the work done by inter-Scandinavian committees is also of great practical interest. In 1861, with the same object in view, the agreement was come to that Danish judgments should be capable of execution in Sweden and Swedish judgments in Denmark. A common currency for all the three Kingdoms was adopted in 1873, and Norway and Sweden have subsequently introduced a uniform system of weights and measures. In 1880 an inter-Scandinavian Bills of Exchange Act was passed, and in addition the Trade Marks and Patents Act, the Firms Act, the Trade Registers and Proxies Act, and the Maritime and Cheques Acts, which in the main are uniform, have subsequently been passed. Also in regard to the legislation on life assurance companies preparatory work has been done and bills have been drafted in common, which in Denmark and Sweden have already become law; the Danish and Norwegian preparatory work in common and the draft of a general law on prescription have, however, only resulted in a Norwegian Act on the subject. Finally an inter-Scandinavian Committee on the Civil Law can record as the first result of its deliberations the draft of an inter-Scandinavian Purchase and Sale Act, which was published in 1903, and subsequently became law in Sweden in 1905 and in Denmark in 1906.

The Bills of Exchange and Maritime Acts of the three Scandinavian countries are so similar — the Bills of Exchange Acts are entirely so and the Maritime Acts

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<sup>1)</sup> The exposition of the Scandinavian legislation relating to bills of exchange and cheques has been made by Dr. *Tybjerg*, Member of the Criminal Court of Copenhagen, but in regard to Norway and Sweden, it has on single points been supplemented by Mr. *Edward Hambro*, Member of the Supreme Court, and Dr. *Aström*. The exposition of the Scandinavian legislation on maritime matters has been made by Mr. *Hambro*, but the special notes on the Norwegian, Danish and Swedish maritime law have been written respectively by Mr. *Hambro*, Dr. *Tybjerg* and Dr. *Aström*.

en unyttig Vidtløftighed og forbundet med trættende Gentagelser at behandle og oversætte disse Love særskilt for hvert af de tre Lande. De vil derfor finde deres Plads i dette skandinaviske Fællesafsnit, som kommer efter de tre Landes Handelsret.

Den fuldstændige Overenstemmelse mellem dansk og norsk Vexellov har gjort det muligt at meddele de skandinaviske Vexelloves autentiske Texter i kun to Redaktioner, en dansk-norsk og en svensk. Da Overensstemmelsen i Ordlyden mellem Søløvene ikke er saa stor og gennemgaaende, er samtlige tre Lovtexter særskilt aftrykte.

# Nordisk

## (Dansk, Norsk, Svensk)

# Vexel- og Checkret.

### Indledning.

De tre nordiske Riger have fælles Vexelret, idet de have næsten enslydende Vexellove, som alle ere daterede 7. Maj 1880, og som alle ere traadte i Kraft d. 1. Januar 1881.

Til Vexellovene slutte sig tre særlige Love, nemlig dansk Lov om Vexelsager og Vexelprotester af 28 Maj 1880, norsk Lov om Rettergangsmaaden i Vexelsager m. v. af 17 Juni 1880 og svensk Forordning om nya Vexelagens införande och hvad i afseende derå iakttages skall af 7 Maj 1880.

Endvidere have de tre Lande i det væsentlige enslydende Checklove, nemlig dansk Lov om Checks og andre Sigtanvisninger af 23 April 1897, norsk Lov om visse Anvisninger (Checks) af 3 August 1897 og svensk Checklag af 24 Marts 1898.

De fælles-nordiske Vexellove ere byggede paa den tyske.

De vigtigste Afgivelser fra den tyske Vexellov i Henseende til Indhold ere følgende:

Den tyske Vexellovs Art. 1 og 2 ere udeladte.

Betalingstiden er ikke optagen som Del af Vexlens nødvendige Indhold.

En egen trasseret Vexel er i enhver Henseende undergivet Reglerne om egen Vexler, og det fordres ikke, at en saadan Vexel skal være betalbar et andet Sted end Udstedelsesstedet.

Er Vexelsummen nævnt med forskellige Beløb, gælder altid det mindste uden Hensyn til, om det er skrevet med Tal eller Bogstaver.

Den tyske Vexellovs art. 16 om Efter-Endossement er ikke optagen.

Førevisning til Akcept er paabudt ved domicilierede Vexler med ubenævnt Domiciliat. Førevisningsfristen ved Sigtvexler er forkortet.

Notifikationspligt er paalagt ogsaa ved Protest for manglende eller ikke betryggende Akcept.

Der er givet Trassaten 24 Timers Betænkningstid, naar der afkræves ham Akcept.

Udstrygning af en engang meddelt Akcept er virkningsløs.



are in the main uniform — that to deal with and translate these Acts separately for each of the three countries would only occasion useless prolixity and wearisome repetitions. They are therefore published in this section, which is common to and follows the commercial laws of the three countries.

The complete harmony between the Danish and Norwegian Bills of Exchange Acts has made it possible to publish the authentic texts of the Scandinavian Bills of Exchange Acts in two renderings only, one Danish-Norwegian and the other Swedish. The harmony of the wording of the Maritime Laws not being so great and thorough, all three texts of the Laws are separately printed.

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## Scandinavian (Danish, Norwegian, Swedish) Law as to Bills of Exchange and Cheques.

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### Introduction.

The law relating to bills of exchange is common to the three Scandinavian Kingdoms, their Bills of Exchange Acts, which were all dated the 7th May 1880, and which all came into force on the 1st January 1881, being nearly identical.

The Bills of Exchange Acts are supplemented by three special Acts, viz. the Danish Act concerning Bills of Exchange Causes and Protests of 28th May 1880, the Norwegian Act concerning the Procedure in Bills of Exchange Causes, etc. of 17th June 1880, and the Swedish Ordinance concerning the introduction of the new Bills of Exchange Act and that which in regard thereto shall be observed, of the 7th May 1880.

In addition the three Scandinavian countries have in the main identical Cheques Acts, viz., the Danish Act concerning Cheques and other orders payable at sight of the 23rd April 1897, the Norwegian Act concerning certain orders (Cheques) of the 3rd August 1897, and the Swedish Cheques Act of the 24th March 1898.

The Scandinavian Bills of Exchange Acts are based on the German law.

The most important deviations from the German Bills of Exchange Code in regard to its contents are the following:

Articles 1 and 2 of the German Bills of Exchange Code have been omitted.

The day for payment has not been included as a necessary part of the contents of a bill of exchange.

A bill of exchange drawn on oneself is in every respect subject to the rules concerning one's own bills of exchange (promissory notes), and it is not required that such a bill shall be issued payable at a place other than that of the place of issue.

If the amount of a bill of exchange is indicated in different sums, the smallest amount is always the one which is payable according to law, whether it has been written in figures or letters.

Art. 16 of the German Bills of Exchange Code concerning after-indorsement has not been included.

Presentment for acceptance is prescribed in regard to domiciled bills of exchange, the domicilee of which is not mentioned. The period for presentment in the case of bills payable at sight has been shortened.

Notification is compulsory also in the case of protest for non-acceptance or for insecurity of acceptance.

The drawee has been granted a period of grace of 24 hours when acceptance is asked of him.

The crossing out of an acceptance which has once been given has no effect according to law.

Andre Tillæg o. desl. til en Akecept end dens Begrænsning til ikkun en Del af Vexelsummen anses som uskrevne.

Der er givet Adgang til Betalingsregres ogsaa i Tilfælde af manglende Akecept.

Den tyske Vexellovs art. 40 (om Deponeren) er udeladt.

Akeptanten skal have Underretning om en domicilieret Vexels Ikke-Betaling.

Kursdifferencer blive ikke at kumulere.

Provisionernes samlede Størrelse maa ej overstige 2 pCt.

Vexejejen maa modtage Trassatens Æresakcept; Interventionsprotest er ikke nødvendig. Regresret mod Adressanten tabes ikke, fordi Nødsadressatens Betaling ej modtages.

For at opnaa Duplikat kan Vexejejen henvende sig umiddelbart til Trassenten.

Ogsaa uakcepterede Vexler kunne mortificeres; naar Mortifikationsstævning er udtagen, kan der mod Sikkerhedsstillelse kræves nyt Vexlexemplar hos Trassenten; af Akeptanten kan der i dette Tilfælde ikke uden Sikkerhedsstillelse kræves Deposition; ved en foreløbig Protest kan den i § 74 hjemlede Ret midlertidig bevares, naar Vexlen er tabt.

Præskription af Vexejejen Regressogsmaal regnes fra Forfaldsdagen; Præskriptionsfristerne ere noget forskellige; Virkningerne af Præskriptionens Afbrydelse ere ikke ganske de samme.

Den tyske Vexellovs art. 82 er udeladt; naar Vexelretten er præskriberet, haves ingen særlig Ret ligeoverfor Akeptant eller Trassent.

En vis Tid paa Dagen er fastsat for Foretagelse af de vexelretlige Handlinger.

Den tyske Vexellovs art. 93—95 ere udeladte.

I Tilfælde af vis major suspenderes Virkningen af de strænge vexelretlige Forskrifter.

Angaaende den fælles nordiske Vexellovs almindelige Karakter maa følgende fremhæves:

1. Den behandler kun Vexelretten i snævrere Forstand. Den beskæftiger sig saaledes kun med Vexlen selv og de deraf udspringende Retsforhold, men ikke med Forpligtelsen til at indgaa en Vexelforpligtelse, f. Ex. Pligten til at akceptere, eller med Vexlens Indflydelse paa det til Grund liggende Forhold. Det er derhos ikke alle af Vexlen udspringende Retsforhold, som Loven behandler, men kun saadanne, der ere særegne for Vexlen eller i alt Fald have fremkaldt ejendommelige Retsregler. Hvor det derimod kun er de almindelige civilretlige Regler, der skulle anvendes, beskæftiger Loven sig ikke dermed. Dette gælder f. Ex. med Hensyn til en Fuldmægtigs Bemyndigelse til at akceptere, Panteret i Vexler, Dækningsogsmaalet, Vexejejen Stilling i Konkursbo osv. Hvor saaledes almindelige civilretlige Regler skulle bringes til Anvendelse, kan der meget vel være Forskelligheder i de tre Landes Lovgivninger, og vil navnlig være ikke uvæsentlig Forskel mellem paa den ene Side Sverigs Lovgivning og paa den anden Side Danmarks og Norges.

2. Paa den egentlige materielle Vexelrets Omraade er der tilvejebragt en saa godt som fuldstændig Overensstemmelse mellem de tre Lande, saaledes som en Sammenligning mellem Lovtexterne viser.
3. Denne Overensstemmelse er ikke traktatmæssig sikret. Det staar den lovgivende Magt i hvert af de tre Lande frit for at ændre Loven for sit Vedkommende naarsomhelst. Dette er dog uden praktisk Betydning. De siden de tre overensstemmende Vexelloves Vedtagelse forløbne 30 Aar have bekræftet, hvad det svenske Lovudvalg i sin Tid udtalte Haabet om, nemlig at „denne Frihed ikke vil blive benyttet, men Vexellovene meget mere udgøre et blivende Vidnesbyrd om trende beslægtede Folks enige

Additions to an acceptance other than its limitation to only a part of the amount of the bill are considered as if they had not been written.

The opportunity of having recourse for payment has been given also in the case of non-acceptance.

Art. 40 of the German Bills of Exchange Code (concerning deposit) has been omitted.

The acceptor must be notified of the non-payment of a domiciled bill of exchange.

Differences arising from re-exchange may not be accumulated.

The total amount of commissions must not exceed 2 per cent.

The holder of a bill is bound to receive the acceptance for honour of the drawee; the protest of intervention for honour is not necessary. The right of recourse against the drawer is not lost because the payment of the referee in case of need is not accepted.

In order to obtain duplicates the holder of a bill of exchange may apply direct to the drawer.

Bills of exchange which have not been accepted may be annulled; when the summons for annulment has been issued, a fresh copy of the bill may be demanded from the drawer on giving security; a deposit must not in such case be demanded from the acceptor without giving security; by means of a provisional protest the right accorded by § 74 may be temporarily preserved when the bill in question has been lost.

The prescription of the recourse action of the holder of a bill is calculated from the day of maturity; the periods for prescription are in some respects dissimilar; the effects of the interruption of a prescription are not quite the same.

Art. 82 of the German Bills of Exchange Code has been omitted; when the right according to the law of bills has been prescribed, no special right exists as against the acceptor or the drawer.

A certain time of the day has been fixed for the performance of acts relating to rights according to the law of bills.

Articles 93—95 of the German Bills of Exchange Code have been omitted.

In the case of *force majeure* the effect of the rigorous provisions in regard to rights according to the law of bills is suspended.

Concerning the general character of the Scandinavian Bills of Exchange Act, the following points should be observed:

1. It only deals with the law of bills in the narrower sense of the term. Consequently it only deals with the bill of exchange itself and the legal relations arising from it, but not with the obligation to contract an obligation according to the law of bills, for example, the obligation to give an acceptance, or with the effect of a bill on the transaction on which it has been based. For this reason the Act does not deal with all the legal relations arising from a bill of exchange, but only with such as are peculiar to a bill of exchange or at least have brought about peculiar legal rules. Where, on the other hand, only the ordinary rules of the civil law are to be applied, the Act does not interfere. This, for example, applies to the authority of an agent to give acceptance, pledge-rights in respect of bills of exchange, actions with a view to obtaining provision, the position of the holder of a bill in regard to bankruptcy estates, etc. Where, consequently, the general rules of the civil law are to be applied, it is quite possible that differences obtain in the legislation of the three countries, and there is, in particular, a very great difference between Swedish legislation on the one hand and the Danish and Norwegian legislation on the other.
2. So far as the basis of the bills of exchange law itself is concerned, virtually a complete agreement between the three countries has been brought about, which a comparison between the texts of the Acts shows.
3. This uniformity has not been secured by treaties. The legislature of each of the three countries is at liberty at any time to modify the law in regard to its own affairs. This however is of no practical importance. The 30 years which have elapsed since the promulgation of three uniform Bills of Exchange Acts have confirmed that in regard to which the Swedish Parliamentary Committee once expressed a hope, viz., that "this liberty will not be made use of, but the Bills of Exchange Acts will on the contrary be a

Samvirken paa et Lovgivningsomraade, hvor der forefindes saa stort Rum for yderligere Overensstemmelse".

4. Af noget større praktisk Betydning er det, at ogsaa de tre Rigers Domstole ere ganske uafhængige af hinanden, hvilket vil kunne fremkalde forskelligartede Højesteretsafgørelser særlig af saadanne Spørgsmaal, som Vexelloven har ladet uløste, f. Ex. om Virkningen af et Efter-Endossement, om Anvendelse af fremmed Ret udenfor de i Kapitel 14 afgjorte Tilfælde, og om Overstrygningers og Forfalskningers Indflydelse paa Vexlens og Vexel-erklæringens Gyldighed.

Kommenteringen til Vexellervene er i det Vexenlige fere: taget paa Grundlag af de erefter angivne Skrifter af Aubert, Evaldsen og Lassen.

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lasting evidence of the agreed collaboration of three related peoples in a sphere of legislation where there is such a vast scope for further unification”.

4. It is of somewhat more practical importance that the tribunals of the three Kingdoms are quite independent of each other, a circumstance which may bring about divergent judgments of the Supreme Courts, in particular in regard to such matters as the Bills of Exchange Acts have left unsolved, for example, the effect of an after-indorsement, the application of foreign law outside the cases provided for in Chapter 14, and the effect of erasures and falsifications on the validity of a bill of exchange and the obligations thereby contracted.

The comments on the Bills of Exchange Acts have in the main been made on the basis of the works on this subject mentioned below, written by Aubert, Evaldsen and Lassen.

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## Vexellov for Danmark.

Vi Christian den Niende, af Guds Naade Konge til Danmark, de Venders og Gothers. . . .

Gjøre vitterligt:

Rigsdagen har vedtaget og Vi ved Vort Samtykke stadfæstet følgende Lov:

(Dansk-norsk Text.)

### Første Afdeling.

#### Om trukne (trasserede) Vexler.

##### Første Kapitel.

##### Om Vexelformen.<sup>1)</sup>

§ 1. En Vexel skal indeholde: udtrykkelig Benævnelse af Vexel, indført i selve Texten, eller, hvis Vexlen er affattet i et fremmed Sprog<sup>2</sup> et tilsvarende Udtryk i dette Sprog;

den Pengesum<sup>3)</sup>, der skal betales (Vexelsummen);

dens Navn<sup>4)</sup>, til hvem Betalingen skal ske (Vexeltager, Remittent);

dens Navn, der skal indfri Vexlen (Vexelbetaler, Trassat);

Tid og Sted for Vexlens Udstedelse;

det Sted<sup>6, 7)</sup> hvor Betalingen skal ske;

dens Underskrift, der udsteder Vexlen (Vexelgiver, Vexeludsteder, Trassent).

2. En Vexel kan lyde paa Betaling til Trassenten selv (Vexel til egen Ordre).

## Lov om Vexler.

(Norge.)

Vi Oscar, af Guds Naade Konge til Norge og Sverige, de Gothers og Venders,

Gjøre vitterligt:

At Os er bleven forelagt det nu forsamlede ordentlige Storthings Beslutning af 12te April dette Aar, saalydende:

## Vexellag.

Gifven Stockholms slott den 7 Maj 1880.

(Sverige.)

Vi Oscar, med Guds nåde, Sveriges, Norges, Götas och Vendes Konung,

göre vederligt:

Det Vi, med Riksdagen, funnit godt antaga följande vexellag, om hvars införande särskild författning utfärdas:

(Svensk text.)

### Första Afdelningen.

#### Om dragna (trasserade) vexlar.

##### Första kapitlet.

##### Om vexels form.<sup>1)</sup>

§ 1. Vexel skall innehålla:

uttrycklig, i sjelfva texten införd, benämning af vexel eller, der den är affattad å främmande språk<sup>2)</sup>, motsvarande uttryck å detta språk;

det penningebelopp<sup>3)</sup>, som skall betalas (vexelsumma);

dens namn<sup>4)</sup>, till hvilken betalning skall ske (vexeltagare, remittent);

dens namn, som skall infria vexeln (vexelbetalare, godkännare<sup>5)</sup>, trassat);

tid och ort för vexelns utställande;

den ort<sup>6, 7)</sup>, hvarest betalningen skall ske;

dens underskrift, som utställer vexeln (vexelgifvare, vexelutställare, trassent).

2. Vexel kan lyda på betalning till vexelgifvaren sjelf (vexel till egen order).

<sup>1)</sup> Egentlige Formforskrifter indeholdes i Virkeligheden kun i §§ 1 og 3. Om Virkningen af, at de ikke ere iagttagne, se § 5. — <sup>2)</sup> Vexler kunne altsaa være affattede i hvilket som helst Sprog; men, er Vexlen affattet i et fremmed Sprog, maa der, under en Vexelproces, forelægges Retten en af en dertil kompetent Person bekræftet Oversættelse. — <sup>3)</sup> En Vexel anerkendes kun som saadan, naar den lyder paa en bestemt Pengesum. En saakaldt Vexel, lydende paa „1000 Kr. i N. Kreditforenings Obligationer“ er f. Ex. ikke anerkendt som Vexel. — <sup>4)</sup> Betegnelse paa anden Maade end ved Navn er ikke tilstrækkelig. Udstedelse af Vexler, lydende paa Ihendehaveren, er udelukket; men Vexler kunne lyde paa Betaling til Trassenten selv (Vexler til egen Ordre) og af ham endosses in blanco. — <sup>5)</sup> Den svenska lagen har här införd beteckningen „godkännare“, hvilket antagits vara riktigare än „vexelbetalare“. — <sup>6)</sup> Det er dog i saa Henseende tilstrækkeligt, at en Stedbetegnelse findes anført ved Trassentens Navn, jvf. § 4, 2 St. I Sverige förekomma i stor utsträckning s. k. postremissvexlar, utfärdade af en bank och dragna på en eller flera banker, så att sålunda dessa vexlar, då bankerna i regel hafva flera kontor, äro betalbara å flera orter. Saadanne Postremissvexlar bruges ogsäa meget i Norge. — <sup>7)</sup> Betalningstiden behöver ikke at være angivet. Vexlen anses i saa Fald som betalbar ved Sigt, jvf. § 3.

## Bills of Exchange Act for Denmark.

We, Christian the Ninth, by the Grace of God King of Denmark, the Wends and the Goths . . .

Make known:

The Rigsdag has passed and We by Our consent have confirmed the following Act:

## Bills of Exchange Act.

(Norway.)

We, Oscar, by the Grace of God King of Norway and Sweden, the Goths and the Wends,

make known:

That the resolution of the 12th of April of this year passed by the regular Storthing now assembled, has been submitted to Us. This resolution reads as follows:

## Bills of Exchange Act.

Given at the castle of Stockholm the 7th May 1880.

(Sweden.)

We, Oscar, by the Grace of God King of Sweden, Norway, the Goths and the Wends,

make known:

That We, in concert with the Riksdag, have consented to pass the following Bills of Exchange Law, concerning the coming into force of which a special Act is promulgated:

### Part I.

## Bills of Exchange drawn on other persons than the drawer himself.

### Chapter I.

#### The form of a bill of exchange.<sup>1)</sup>

§ 1. A bill of exchange must contain:

The express designation of a bill of exchange, inserted in the text itself, or if the bill of exchange in question has been drafted in a foreign language<sup>2)</sup>, a corresponding expression in that language;

The sum of money<sup>3)</sup> which is to be paid (the amount of the bill of exchange);

The name<sup>4)</sup> of the person to whom payment is to be made (taker, payee);

The name of the person who is to pay the bill of exchange (payer, acceptor<sup>5)</sup>, drawee);

The date and the place at which the bill of exchange is issued;

The place<sup>6, 7)</sup> where payment is to be made;

The signature of the person who issues the bill of exchange (bill of exchange giver, bill of exchange issuer, drawer).

2. A bill of exchange may be payable to the drawer himself (bill of exchange to one's own order).

<sup>1)</sup> Regulations properly so-called concerning the form of a bill of exchange are in reality contained only in §§ 1 and 3. As to the consequences of not having observed them, see § 5. —

<sup>2)</sup> Bills of exchange may consequently be drafted in any language; but if the bill in question has been drafted in a foreign language, it must, in the case of a bill of exchange process, be submitted to the competent tribunal in a translation which has been certified by a qualified person. — <sup>3)</sup> A bill of exchange is only recognised as such when a definite amount of money has been named in its text. A so-called bill of exchange designated, for example, as "1000 kroner in bonds issued by the Credit Association of N.", is not recognised as a bill of exchange. —

<sup>4)</sup> A designation otherwise than by name is insufficient. The issue of bills of exchange to bearer is not permitted; but bills of exchange may be issued payable to the drawer himself (bills of exchange issued to the drawer's own order) and be indorsed by him in blank. — <sup>5)</sup> The *Swedish* Act has here used the term "acceptor", which has been supposed to be more correct than "payer of the bill of exchange". — <sup>6)</sup> It is, however, in this respect sufficient that a designation of place is found stated near the drawer's name; compare § 4, 2nd paragraph. In *Sweden* there are used to a large extent the so-called "bills of exchange remitted by post", issued by a bank and drawn on one or several banks, to the effect that in this manner these bills of exchange, owing to the fact that the banks as a rule have several branches, are payable at several places. Such bills of exchange are also much used in *Norway*. — <sup>7)</sup> The time for payment need not be indicated. In this case the bill of exchange is considered as being payable at sight; compare § 3.

Lyder en trasseret Vexel paa at indfries af Trassenten selv (trasseret egen Vexel), anses den som en egen Vexel (§ 95).

3. Betalingstiden skal for den hele Vexelsum være en og den samme.

Vexlen kan kun lyde paa Betaling:

paa en bestemt Dag;  
ved Forevisning (ved Sigt, a vista);  
en vis Tid efter Forevisningen (efter Sigt, a viso); eller  
en vis Tid efter Udstedelsen (a dato).

Er ingen Betalingstid nævnt, anses Vexlen som betalbar ved Sigt.

4. En Vexel kan lyde paa Betaling et andet Sted end der, hvor Trassaten boer (domicilieret Vexel).

Er særskilt Betalingssted ikke nævnt, gjælder som Vexlens Betalingssted det ved Trassatens Navn anførte Sted, hvor han tillige antages at bo.

5. Er et Dokument ikke affattet overensstemmende med de foran givne Forskrifter, medfører det ikke Vexelret. Heller ikke have de paa et saadant Dokument tegnede Erklæringer, saasom Akept, Endossement eller Borgen, nogen vexelretlig Virkning.

*ad § 3.* Jvf. §§ 31—34 og § 19. — Som det vil ses, er der ingen Grænse sat for den Tid, der i Vexlen kan fastsættes som Lobetid, men Forfaldstiden kan ikke gores afhængig af uvisse Forhold som f. Ex. et Dødsfald eller lign. — *Uso-Vexler* d. v. s. Vexler, hvis Forfaldstid bestemmes ved den paa vedkommende Handelsplads gældende *Usance*, kendes ikke efter norsk Vexelret.

*ad § 4. 1ste St.* Navnlig paa Grund af Reglen i § 18 er det af Vigtighed for Vexelejeren at vide, om Vexlen er en domicilieret Vexel eller ej. Det kan i saa Henseende ikke komme an paa, om Trassatens virkelige Bopæl er et andet Sted end Betalingsstedet, men om det Sted, der ifølge Vexlens Indhold maa antages for hans Bopæl, er forskelligt fra Betalingsstedet. Altsaa blive alle de Vexler og kun de Vexler, der fra Trassatens Haand angive et Sted som Trassatens Bolig og et andet Sted som Betalingssted, at anse som domicilerede. — Medens man ikke vil være i Tvivl om, at en Vexel, der angiver Trassatens Bopæl i een Købstad og Betalingsstedet i en anden Købstad, er en domicilieret Vexel, og omvendt, at en Vexel, der angiver Trassatens Bopæl og Betalingsstedet som værende i to forskellige Ejendomme i en og samme Købstad, ikke er det, kan det i øvrigt være tvivlsomt, hvorledes Ordet „Sted“ („ort“) skal forstås. Naturligst er det maaske i dansk og norsk Ret at forstaa det som sigtende til Notariatskreds. „Ort“ torde enligt *svensk* rätt motsvara „muntalsskrifning-distrikt“ d. v. s. „stad, socken å landet eller, der socken tillhör flera fögderier, fögderidel af socken“ (jvf. §§ 1 och 2 i K. F. ang. muntalsskrifning den 6 Aug. 1894). Om Vexler, der lyde paa Betaling hos en Anden end Trassaten, men paa samme Sted, som denne boer (uegentlige domicilerede Vexler), taler Vexelloven ikke; men det antages at følge af Vexellovens § 89 (jvf. Ordene „saafremt anden Overenskomst ikke træffes“), at saadan Vexel maa kræves betalt og eventuelt protesteres de non solutione hos den angivne Betaler (ikke hos Trassaten), idet der, naar Trassaten har givet Vexlen saadan Tilføjelse, eller denne er gjort af Akeptanten og modtaget af Vexelejeren, foreligger en efter § 89 gyldig Overenskomst om, hvor Vexlen skal forevises til Betaling.

*ad § 4. 2det St.* Hvis der paa den anden Side i Vexlen findes anført et særskilt Betalingssted, men derimod ikke Bopælsbetegnelse ved Trassatens Navn, maa det angivne Betalingssted antages at være Trassatens Bopæl, hvor Akept kan forlanges og eventuelt Protest de non acceptatione foretages, jvf. § 89.

*ad § 5.* Forinella brister uti vexlens nödvändiga innehåll (§§ 1 och 3) hafva en vidsträcktare verkan enligt *svensk* än enligt dansk och norsk rätt. Derest en handling, som är afsedd att

Är vexel dragen att inlösas af vexel-gifvaren sjelf (trasserad egen vexel), skall den anses såsom egen vexel, hvarom i § 95 sägs.

3. Betalingstiden skall vara en och densamma för hela vexelsumman.

Vexeln kan endast lyda på betalning:

å viss dag;  
vid uppvisandet (vid sigt, a vista);  
å viss tid efter uppvisandet (efter sigt, a viso); eller  
å viss tid efter utställandet (a dato).

Är icke någon betalningstid nämnd, anses vexeln såsom betalbar vid uppvisandet.

4. Vexel kan lyda på betalning å annan ort, än der vexelbetalaren bor (domicilierad vexel).

Är särskild betalningsort ej nämnd, gälla såsom vexelns betalningsort den vid vexelbetalarens namn utsatta ort, hvilken jemväl anses såsom hans boningsort.

5. Är handlingen icke affattad i öfverensstämmelse med här ofvan gifna föreskrifter, medföra den icke vexelrätt. Icke heller hafva de på sådan handling tecknade förbindelser, såsom godkännande, öfverlåtelse eller borgen, någon verkan efter vexellagen.



If a bill of exchange is issued payable by the drawer himself (bill drawn on oneself), it is considered as being one's own bill of exchange (promissory note) (§ 95).

3. The time of maturity shall be one and the same for the whole amount of the bill of exchange.

A bill of exchange can only be payable:

on a definite day;

on presentment (at sight, *a vista*);

at a certain time after presentment (after sight, *a viso*); or

at a certain time after the issue (at a certain date).

If no time of maturity is mentioned, a bill of exchange is considered as payable at sight.

4. A bill of exchange may be payable at another place than that in which the drawee resides (domiciled bill of exchange).

If the place of payment is not specially mentioned in a bill of exchange the place indicated near the drawee's name is considered as the place of payment and also his place of residence.

5. If a document is not couched in terms in accordance with the aforesaid provisions, it does not give rise to the bills of exchange rights. Nor have the contracts made on such a document, as for example, acceptance, indorsements or guarantees, the effects provided according to the bills of exchange law.

*To § 3.* Compare §§ 31—34 and § 19. — As it is seen, there is no limit fixed for the time which in a bill of exchange may be fixed as the time for payment, but the date of payment cannot be made dependent on uncertain circumstances, as, for example, on the occurrence of a death, etc. — Usance bills, i. e. bills of exchange the date of payment of which is fixed in accordance with the custom obtaining at the place of commerce in question, are not known according to Scandinavian law.

*To § 4, 1st paragraph.* Particularly on account of the rule contained in § 18 it is of importance for the holder of a bill of exchange to know whether it is a domiciled bill of exchange or not. It does not matter in this respect whether the drawee's real residence is at another place than the place of payment, but whether the place which according to the contents of the bill of exchange must be supposed to be his residence, is different from the place of payment. Consequently, all those bills of exchange, and only those, which by the drawer's hand indicate a place as the drawee's residence and another place as the place of payment, are considered as domiciled. — Whereas there is no doubt as to whether a bill of exchange indicating the drawee's residence in one town and the place of payment in another town is a domiciled bill, and on the other hand, that a bill of exchange indicating the drawee's residence and the place of payment as being at two different houses in one and the same town, is not a domiciled bill of exchange, it may on the whole be doubtful how the word "place" (*Sted, Ort*) is to be understood. In Danish and Norwegian law it is perhaps most natural to understand the term as having in view the district of a notary. According to Swedish law the word "*Ort*" is supposed to correspond to the "district of the citizens' record", i. e. "town, rural parish, or, where a parish belongs to several bailiffs' districts, the part of a bailiff's district comprising the parish in question" (compare §§ 1 and 2 of the Royal Ordinance concerning the recording of citizens of the 6th Aug. 1894). As to bills of exchange payable by other persons than the drawees, but who are resident at the same places where the latter are living (domiciled bills of exchange not properly so-called), the Bills of Exchange Act says nothing; but it is supposed to be implied in § 89 of the Bills of Exchange Act (compare the words "provided no other agreement is come to") that the payment of such a bill must be demanded, and the bill eventually be protested for non-payment, at the residence of the payer indicated (not at the drawee's residence), so that when a drawer has made such a supplementary note in a bill of exchange, or when it has been made by the acceptor and agreed to by the owner of the bill in question, we have before us a valid agreement according to § 89 as to where such bill shall be presented for payment.

*To § 4, 2nd paragraph.* If on the other hand a special place of payment is indicated in a bill of exchange, but there is no indication as to residence near the drawee's name, the indicated place of payment is considered the drawee's residence, where acceptance may be demanded and protest for non-acceptance be effected; compare § 89.

*To § 5.* Formal defects in the necessary contents of a bill of exchange (§§ 1 and 3) entail more serious consequences according to Swedish than according to Danish and Norwegian

6. Er Vexelsummen nævnt flere Gange, men med forskjellige Beløb, gjælder det, som mindst er.

6. Är vexelsumma flere gånger utsatt, men till olika belopp, gälle det, som minst är.

7. Indeholder en Vexel Tilsagn om Rente, anses det som uskrevet.

7. Utfästes i vexel ränta, vare det ogilt.

### Andet Kapitel.

#### Om Trassentens Ansvar.

8. Trassenten svarer efter Vexelret for Vexlens Godkjendelse (Akept) og Betaling.

### Andra kapitlet.

#### Om vexelgifvares ansvarighet.

8. Vexelgifvare svare efter vexelrätt för vexels godkännande (accept) och betalning.

### Tredje Kapitel.

#### Om Overdragelse af Vexlen (Endossement, Giro).

9. En Vexel kan ved Endossement overdrages til en Anden (Endossatar), selv om intet herom er nævnt i Vexlen<sup>1)</sup>. Har Trassenten i selve Vexlens Text ved Ordene „ikke til Ordre“ eller deslige forbudt dens Overdragelse, medfører saadan ingen vexelretlig Virkning.

### Tredje kapitlet.

#### Om öfverlåtelse af vexel (indossament, giro).

9. Vexel må öfverlätas till annan (indossatarie), ändå att ej något härom är i vexeln nämndt<sup>1)</sup>. Har vexelgifvaren i vexelns text med orden „icke till order“ eller dylikt förbjudit öfverlåtelse, gifve öfverlåtelse, som ändå sker, ingen vexelrätt.

gälla såsom vexel, är behäftad med formella brister, förlorar densamma vexelrättslig verkan d. v. s. handlingen är, allt efter omständigheterna att betrakta antingen såsom anvisning (om det varit meningen att utfärda en trasserad vexel) eller ett skuldebref (om det varit meningen att utfärda en egen vexel). I ena som andra fallet är det beträffande gäldenärs rätt att göra invändningar mot godtroende förvärfvare enligt dansk och norsk rätt likgiltigt, om handlingen är stäld till viss man eller viss man eller order (se ndf. § 8 not). Enligt svensk rätt deremot måste handlingen bedömas enligt reglerna för löpande skuldebref, om den är stäld till viss man eller order, men enligt reglerna för icke löpande skuldebref, om den är stäld till viss man, d. v. s. i förra fallet behöfver den, som genom transport blifvit innehafvare af förbindelsen, icke låta gälla emot sig andra invändningar än sådana, som grunda sig på själfva handlingen, medan i senare fallet den senare innehafvarens rätt är underkastad samma inskränkningar som öfverlåtarens.

ad § 6. Selv om der akcepteres for det større Beløb, gjælder Vexlen dog kun for det mindre.

ad § 7. At Tilsagn om Rente i en Vexel anses som uskrevet, maa betyde, at et saadant Tilsagn ikke blot ikke skaber en vexelretlig Forpligtelse, men ikke engang skaber en almindelig skriftlig Forpligtelse, og at Vexlen ikke kan benyttes som Bevis for Lofte om Rente.

ad § 8. At Trassenten svarer efter Vexelret, sigter ikke blot till Vexelskyldnerens ugunstige processuelle Stilling (jvf. ndf. S. 31 fl.), men bl. a. ogsaa særlig til den ikke blot processuelle, men absolutte Fortabelse af ikke paategnede Indsigelser, der i dansk og norsk Ret ikke blot ved Vexler, men overhovedet ved Gældsbreve indtræder i Forholdet til godtroende Erhververe. Som ikke-exstingible maa dog navnlig nævnes: Indsigelser vedrørende Umyndighed, Tvang, Falsk og Vexlens Præjudicering eller Præskription, foruden de Indsigelser, der fremgaa af selve Vexlen. Derest en handling har vexelns formella betingelser gälla ofvanstående regler också enligt *svensk* rätt (jmf. § 5 not.).

ad § 9.1) Da det ikke af Vexelloven er opstillet som Betingelse for vexelretligt Endossement, at Vexlen ikke allerede er forfalden, maa Endossement af forfalden Vexel (Efter-Endossement) have vexelretlig Virkning og kunne ske, endog naar Vexelomgangen er forsmået, saa at Vexelretten er tabt mod Trassent og Endossenter, men derimod næppe, naar ethvert Krav (ogsaa mod Akeptanten) efter Vexlen er ophørt. — Ifrågavarande bestämmelse står i motsats till den *svenska* civilrättens allmänna regler, enligt hvilka ett till viss man stäldt skuldebref endast får öfverlätas under de för icke löpande skuldebref gällande betingelser (jmf. § 5 not.).

6. If the amount of a bill of exchange is mentioned several times, but each time differently, the smallest amount is considered as being that of the bill of exchange in question.

7. If a bill of exchange contains any promise as to interest, such promise is considered as if it had not been written.

## Chapter II.

### Concerning the responsibility of the drawer.

8. The drawer is responsible, according to bills of exchange law, for the acceptance and payment of a bill of exchange.

## Chapter III.

### Concerning the transfer of bills of exchange (indorsement, giro).

9. A bill of exchange may be transferred to another person (the indorsee) by means of indorsement, even when nothing on this point is mentioned in the bill of exchange in question<sup>1)</sup>. If the drawer in the text of a bill of exchange itself has prohibited the transfer thereof by means of the words "not to order", or other similar clause, a transfer, if it nevertheless takes place, does not give any right according to bills of exchange law.

law. When an instrument intended to be a bill of exchange is impaired by formal defects, it loses the effects to which the bills of exchange law gives rise, i. e. the instrument is, according to circumstances, either to be considered as a mandate (in case the drawer's intention was to issue a bill of exchange drawn on some other person) or a note of hand (in case the drawer's intention was to issue a bill of exchange drawn on himself). In one case as well as the other it is the right of the debtor in question to raise defences against transferees in good faith according to Danish and Norwegian law, and it is indifferent whether the instrument is issued payable to a certain person or to a certain person or his order (see below, note to § 8). According to Swedish law, on the other hand, the instrument must be judged according to the rules for notes of hand issued to bearer, if it has been issued payable to a certain person or his order, but according to the rules for notes of hand not issued to bearer, if it has been issued payable to a certain person, i. e. in the former case, the person who by way of transfer has become the owner of the obligation, is not bound by other defences against himself than such as are based on the instrument itself, whereas in the latter case the rights of subsequent owners are subject to the same limitations as those of the indorser.

To § 6. Even when acceptance is given for the larger amount, the bill of exchange is good only for the smaller amount.

To § 7. That a promise of interest contained in a bill of exchange is considered as not written, must mean that such a promise not only does not cause an obligation to exist according to the bills of exchange law, but does not even cause an ordinary written obligation to exist, and that the bill of exchange cannot be used as a proof of a promise of interest.

To § 8. That the drawer is responsible according to the bills of exchange law not only refers to the unfavourable position of the debtor on the bill of exchange in question in case of legal proceedings (compare below p. 31 et seq.), but also, for example, especially to the loss, not only in the case of legal proceedings but absolutely, of all defences not resulting from the bill of exchange itself, which, according to Danish and Norwegian law, not only in the case of bills of exchange, but generally in the case of notes of hand, are not permitted to be set up against transferees in good faith. Amongst those however which may be set up must in particular be mentioned: defences in regard to incapacity, duress, forgery and the prejudice or the prescription of bills of exchange, besides those defences which result from the bill of exchange itself. When an instrument fulfils the formal conditions of a bill of exchange, the above rules apply also according to *Swedish* law (compare note to § 5).

To § 9.<sup>1)</sup> Owing to the fact that the Bills of Exchange Act does not prescribe as a condition of an indorsement valid according to the bills of exchange law, that the bill should not be already due for payment, the indorsement of a bill of exchange which has already become due (after-indorsement) must have the effects resulting from the bills of exchange law, and may be effected even when protest has been omitted, and the rights on the bill of exchange have been lost as against the drawer and indorsers, but not, on the other hand, when every claim (also as against the acceptor) upon the bill of exchange has ceased. The preceding rule differs from the general rules of the *Swedish* Civil Code, according to which a note of hand issued to a certain person can only be transferred on the conditions which apply to notes of hand not issued to bearer.

10. Ved Endossement gaa alle af Vexlen flydende Rettigheder, deriblandt ogsaa Retten til at endossere Vexlen videre, over paa Endossataren. Vexlen kan endosses ogsaa til Trassenten, til Trassaten, til Akceptanten eller til en tidligere Endossent<sup>1)</sup> og af disse igjen til Andre.

11. Endossementet skal skrives paa selve Vexlen eller paa en Afskrift af den (Kopi) eller paa et til Vexlen eller Kopien hæftet Blad (alonge).

12. Endossement kan ske enten saaledes, at Endossenten indsetter Endossatarens Navn og underskriver sit eget (fuldstændigt Endossement), eller og derved, at Endossenten blot tegner sit Navn paa Vexlens eller Vexelkopiens Bagside eller paa det vedhæftede Blad (Endossement in blanco).

13. Blanko-Endossement kan af Vexleieren udfyldes ved Indsættelse af en Endossatars Navn<sup>2)</sup>.

14. Enhver Endossent svarer alle efterfølgende Eiere af Vexlen efter Vexelret<sup>3)</sup> for dens Akcept og Betaling, saafremt han ikke i sit Endossement ved Ordene „uden Forbindtighed“, „uden Ansvar“, „uden Obligo“, „uden Retur“ eller deslige udtrykkelig har forbeholdt sig at være fri for saadant Ansvar.

15. Indeholder et Endossement udtrykkeligt Forbud mod at endossere Vexlen videre, og overdrages den desuagtet, have senere Vexelejere ikke Vexelret mod den Endossent, som gav Forbudet.

16. Et Endossement, som kun indeholder en Fuldmagt eller en Bemyndigelse til Inkassering eller deslige (Prokura-Endossement), overfører ikke Ejendomsret til Vexlen, men giver alene Fuldmægtigen Hjemmel til at tage de til Vexelrettens Bevaring fornødne Forholdsregler og til at indtale og oppebære Vexelsummen, samt, saafremt saadant ikke er udtrykkelig forbudt i Endossementet, til at overdrage Vexlen ved nyt Prokura-Endossement<sup>4)</sup>.

10. Genom öfverlåtelse (indossament, giro) varda alla af vexeln härflytande rättigheter, deribland öck rätt att vidare öfverlåta vexeln, öfverflyttade på den, till hvilken öfverlåtelsen skett. Vexel kan öfverlåtas äfven till vexelgifvare, till vexelbetalare, till godkännare eller till föregående öfverlåtare<sup>1)</sup> och af dessa åter till andra.

11. Öfverlåtelse skall tecknas å sjelfva vexeln eller å en afskrift deraf (kopia) eller å ett vid vexeln eller afskriften häftadt blad (alonge).

12. Öfverlåtelse kan ske antingen sålunda, att öfverlåtaren utsätter dens namn, till hvilken öfverlåtelsen sker, och dervid skrifver sin namnteckning (fullständigt indossament), eller öck medelst öfverlåtarens blotta namnteckning å vexelns eller afskrifvens baksida eller å det vidhäftade bladet (öfverlåtelse in blanco, indossament in blanco).

13. Öfverlåtelse, som skett medelst öfverlåtarens blotta namnteckning, må af vexelinnehafvare fyllas genom insättande af indossatars namn<sup>2)</sup>.

14. Hvar, som vexel öfverlåter, stånde för dess godkännande och betalning i ansvarighet efter vexelrätt till alla dem, som efter honom blifva deraf innehafvare, så framt han ej i öfverlåtelsen med orden „utan förbindelse“, „utan ansvar“, „utan obligo“, „utan retur“, eller dylikt uttryckligen förbehållit sig att vara från sådan ansvarighet fri.

15. Innehåller öfverlåtelse uttryckligt förbud att vexeln vidare öfverlåta, och öfverlåtes den ändå, hafve senare vexelinnehafvare icke vexelrätt mot den öfverlåtare, som förbudet gaf.

16. Öfverlåtelse, som innehåller blott en fullmakt eller ett uppdrag „till inkassering“ eller dylikt (procura-indossament), medföra icke eganderätt till vexeln, utan vara syssломannen endast behörig att vidtaga erforderliga åtgärder till vexelrättens bevarande samt att utsöka och uppbåra vexelsumman, så öck att, derest det icke blifvit uttryckligen i öfverlåtelsen förbjudet, öfverlåta vexeln genom nytt procura-indossament<sup>4)</sup>.

<sup>1)</sup> Disse Personer kunne dog selvfølgelig ikke gøre Vexlen gældende mod dem, som de ere vexelforpligtede overfor, hvorimod de kunne bringe disse sidstes Vexelpligt til at træde i Virksomhed igen, ved at endossere Vexlen videre. — <sup>2)</sup> Derimod kan Endossataren ikke ferandre sit fuldstændige Endossement til Blankoendossement ved Overstregning af sit Navn; og naar et Blankoendossement er efterfulgt af andre Endossementer, er det at betragte som udfyldt, og Udstregningen af de efterfølgende Navne giver ikke Ihændehaveren Legitimation efter Reglerne om Blankoendossement. Den svenska lagen använder uttrycket „vexelinnehafvare“ eller „innehafvaren af vexeln“ i stället för den danska och norska lagens „Vexeleier“. Detta är dock blott en redaktionel olikhet. — <sup>3)</sup> Jvf. Bemærkning ved § 8. — <sup>4)</sup> Prokura-Endossataren kan altså ikke f. Ex. eftergive Vexelkravet eller overdrage Vexlen ved egentligt Endossement; forsyner han Vexlen med et saadant, virker det kun som Prokura-Endossement. § 16 giver dog aabenbart kun en Legitimationsregel, d. v. s. den afgør, hvad Prokura-Endossataren udmålt med Retsvirkning kan foretage. Derimod bestemmer den Intet om Forholdet mellem Vexelejeren og Fuldmægtigen, hvilket maa afgøres efter de mellem dem foreliggende Aftaler. Mangler Prokura-Klausulen i Endossementet, giver dette vel Endossataren Legitimation som Vexelejer, men gør ham i Virkeligheden ikke til Vexelejer, naar det oplyses, at der kun foreligger et Endossement i Inkassations-Ojemed. Den modsatte Anskuelse, at Endossement af Vexlen uden Prokura-Klausul i Inkassations-Ojemed gør Endossataren til Vexelejer, saa at

10. By indorsement all the rights arising from a bill of exchange, and in particular the right of further indorsement, are transferred to the indorsee. A bill may also be indorsed to the drawer, drawee, acceptor or a previous indorser<sup>1)</sup>, and by these again to others.

11. An indorsement shall be written on the bill of exchange itself or on a duplicate of it (copy), or on a slip fastened to the bill or copy (allonge).

12. Indorsement may take place either by the indorser designating the name of the indorsee and signing his own (special indorsement), or by the indorser's mere signature written on the back of the bill or on the copy of the bill or on the allonge (indorsement in blank).

13. An indorsement in blank may be filled up by the holder of the bill, by inscribing the name of an indorsee<sup>2)</sup>.

14. An indorser is responsible towards all the succeeding holders of a bill for its acceptance and payment in accordance with the law of bills<sup>3)</sup>, provided he has not in his indorsement, by means of the words "without obligation", "without responsibility", "without guarantee", "without recourse" or other similar term, expressly reserved freedom from such responsibility.

15. If an indorsement contains an express prohibition against further indorsing a bill, and if it is transferred in spite of such prohibition, subsequent holders of the bill have no rights according the law of bills as against the indorser who issued the prohibition.

16. An indorsement containing only a power or authority for collection (procuration indorsement), or other similar authorization, does not transfer the right of ownership to a bill of exchange, but only authorizes the agent in question to take the steps necessary for maintaining the rights resulting from the law of bills and to sue the debtor and collect the amount of the bill, and, provided that this is not expressly prohibited in the indorsement, to transfer the bill by way of another procuration indorsement (for collection<sup>4)</sup>).

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<sup>1)</sup> These persons, however, of course cannot enforce the bill of exchange against persons towards whom they are liable according to the bills of exchange law, whereas they may cause the bill of exchange obligation of the latter to operate anew by further indorsing the bill in question. — <sup>2)</sup> On the other hand, the indorsee must not convert a complete indorsement into an indorsement in blank by crossing out his own name; and when an indorsement in blank is succeeded by other indorsements, it is to be considered as filled up, and the crossing out of subsequent names does not give the holder rights according to the rules concerning indorsements in blank. The *Swedish Act* uses the term "bill possessor" or "possessor of the bill" instead of the term "bill owner" used in the Danish and Norwegian Acts. This is, however, only an editorial dissimilarity. — <sup>3)</sup> Compare with the note to Art. 8. — <sup>4)</sup> An indorsee by procuration is consequently not entitled, for example, to renounce a claim inherent in a bill of exchange or to transfer a bill by means of a real indorsement; if he writes such indorsement on the bill, it only has the value of a procuration indorsement (for collection). § 16, however, obviously only provides a rule as to authorization, i. e. it decides what a procuration indorsee is lawfully entitled to do in regard to third persons. On the other hand, it decides nothing with regard to the relation between the owner of the bill and the agent, which must be decided according to the agreements existing between them. If the procuration clause is wanting in an indorsement, this circumstance certainly gives the indorsee the right of ownership of the bill, but does not in reality make him the owner of the bill when it is proved that we only have before us an indorsement with a view to collection. The contrary opinion that indorsing a bill for the purpose of collection without adding the procuration clause, makes the indorsee the owner of the bill,

## Fjerde Kapitel.

## Om Vexlens Forevisning til Akcept.

17. Enhver, som har en Vexel i Hænde<sup>1)</sup>, er berettiget til straks at forevise<sup>2)</sup> den til Akcept og, hvis saadan ikke erholdes<sup>3)</sup> inden den i § 21 bestemte Tid, at optage Protest for manglende Akcept (de non acceptatione). Aftale, som strider herimod, har ikke vexelretlig Virkning.

18. Lyder en Vexel paa Betaling et andet Sted end der, hvor Trassaten boer, og har Trassenten ikke paa Vexlen opgivet, ved hvem Betalingen paa det andet Sted skal erlægges<sup>4)</sup>, skal den før Forfaldsdag<sup>5)</sup> forevises Trassaten til Akcept og, saafremt saadan ikke erholdes, protesteres. Forsømmes dette, tabes Vexelretten mod Trassenten og Endossenterne.

19. Lyder en Vexel paa Betaling efter Sigt, skal den forevises til Akcept inden den Tid, som maatte være foreskrevet i Vexlens Text, eller, naar saadan Forskrift mangler, inden 6 Maaneder fra Udstedelsesdagen, hvis den er trukken fra eller paa noget Sted i Europa med Undtagelse af Island og Færoerne,

## Fjerde kapitlet.

## Om vexels oppvisande til godkännande.

17. En hvar, som har vexel i händer<sup>1)</sup>, är berättigad att strax uppvisa<sup>2)</sup> densamma till godkännande och att, der sådant icke inom den i § 21 stadgade tid erhålles<sup>3)</sup>, protestera för uteblifvet godkännande (de non acceptatione). Aftal, som strider häremot, hafve icke verkan efter vexellag.

18. Lyder vexel på betalning å annan ort än der vexelbetalaren bor, och har ej vexelgifvaren i vexeln utsatt, af hvem betalning bör å den andra orten erläggas<sup>4)</sup>, skall den före förfallodagen<sup>5)</sup> förevisas vexelbetalaren till godkännande och, derest sådant icke erhålles, protesteras. Försummas det, förloras vexelrätten mot vexelgifvare och öfverlåtare.

19. Är vexel stäld att betalas viss tid efter uppvisandet, skall den uppvisas till godkännande inom tid, som dertill i vexelns text föreskrifven är, eller, der sådan föreskrift saknas, inom sex månader från utgiftningdagen, om den är dragen från eller på någon ort i Europa, med undantag af Island och

navnlig Indsigelser, som tilkomme Vexelskyldneren mod Endossenten, ere tabte overfor denne Endossatar som overfor andre, er dog hævdet i svensk Teori.

<sup>1)</sup> Mærk: En h v e r Ihænde-haver af Vexlen, ikke blot den, der efter § 39 er legitimeret til at kræve Betaling. — <sup>2)</sup> Forevisningen skal ske paa det Sted, som efter Vexlens Indhold skal anses som Trassatens Bosted, jvf. § 4 i. f. og § 89. — Findes der paa Stedet flere Personer af samme Navn, kan Protesten foregaa for hvilkensomhelst af dem — Angiver Vexlen flere Trassater, maa det vistnok, fornavndt intet Andet følger af Vexlens Indhold eller af Sædvane, antages, at Regres først kan finde Sted, naar Protest er optaget for dem alle. — Er Trassaten et Interessentskab, antages Protest for et aktivt Medlem tilstrækkelig. — Er trassaten ett intressentskab bör, enligt svensk rätt, protest upptagas hos den, som med laga verkan för intressentskapet kan mottaga stämning (11 kap. Rättsgångsbalken enligt lagen den 10 Juli 1899). I realiteten afviker likväl icke denna regel från den ofvan angifna. — Er Trassaten død, formenes Voxelejeren ikke at kunne være pligtig til at søge Arvingernes Akcept i Stedet. Ønsker han ikke denne, maa han derfor kunne søge Regres efter Protest, ligesom naar Trassaten af anden Grund ikke kan findes (§ 89 i. f.). Er han derimod villig til at modtage Arvingernes Akcept, maa denne formentlig behandles som en Interventionsakcept efter § 57, hvorfra følger, at ogsaa her Protest maa gaa forud. — <sup>3)</sup> Modtagelse af Akcept kan ikke nægtes af den Grund, at Trassaten er kommen under Konkurs. Nægtes Akcept, kan Vexelejeren strax, efterat Protest er optaget, uden Hensyn til Vexlens Forfaldstid, holde sig til Trassent og Endossenter, jvf. §§ 25 og 29 (medmindre da Vexlen var forsynet med Nødsadresse, jvf. §§ 56 og 61). — Akcept med Forbehold er ifølge § 22 det samme som ren Akcept. — <sup>4)</sup> Medens der næppe kan være Tvivl om, at Klausulen „betalbar ved“ eller „betalbar hos“ N. N. Bank betegner Banken som Domiciliat, og det samme i Norge og Sverig antages med Hensyn til Klausulen: „betalbar i N. N. Bank“ („betalbar N. N. Bank“), har dansk Retspraxis vist Tilbøjelighed til at opfatte disse sidste Udtryk som ikke betegnende Banken som Domiciliat, men kun som Betalingssted. De kjøbenhavnske Hovedbanker have derfor i April 1903 udsendt et Cirkulære, hvori de henlede Opmærksomheden paa, at det vil være hensigtsmæssigt ved Angivelse af Domiciliat paa Vexler altid at benytte Ordene „betalbar ved N. N.“ — <sup>5)</sup> Da efter Ordene ikke blot Forevisningen skal foretages, men ogsaa den eventuelle Protest være paabegyndt Dagen for Forfaldsdag, vil det som Følge af Reglen i § 21, 1ste Pkt. være uforsigtigt at vente med Forevisningen til selve Dagen for Forfaldsdagen.

ad § 18 og 19. Udenfor de i disse to §§ angivne Tilfælde er Forevisning til Akcept ikke længer Betingelse for Vexelrettens Bevaring, og i Anledning af ikke betryggende Akcept (§ 30) ere Forholdsregler til Vexelrettens Bevaring ikke fornødne.

## Chapter IV.

## Concerning the presentment of bills of exchange for acceptance.

17. Any person holding a bill<sup>1)</sup> has the right to present<sup>2)</sup> it at once for acceptance, and, if acceptance is not obtained<sup>3)</sup> within the time fixed in § 21, to protest it for non-acceptance (*de non acceptatione*). An agreement to the contrary has no effect according to the law of bills.

18. If a bill is payable at a place other than where the drawee is domiciled, and if the drawer has not indicated in the bill by whom payment at the other place shall be made<sup>4)</sup>, the bill shall be presented to the drawee for acceptance before the day for payment<sup>5)</sup>, and, if acceptance is not obtained, be protested. If this is omitted, all rights according to the law of bills are lost against the drawer and the indorsers.

19. If a bill is payable at a certain time after sight, it shall be presented for acceptance within the time which has been fixed in the text of the bill, or, when such stipulation is wanting, within six months of the day of issue, if it has been drawn from or on any place in Europe with the exception of Iceland and the Farøe Islands, and within a year if it has been drawn from or on the two last mentioned

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to the effect notably that defences which the debtor on the bill is entitled to set up against the indorser, cannot be set up either against this indorsee or against others, is however maintained in Swedish theory.

<sup>1)</sup> Observe these words: Any holder of a bill, not only the person who according to § 39 is authorized to demand payment. — <sup>2)</sup> A bill of exchange must be presented for acceptance at the place which in accordance with the contents of the bill must be considered as the domicile of the drawee; compare § 4 et seq. and § 89. — If there are several persons of the same name at the place, the protest may be made in respect of any of them. — If a bill indicates several drawees, it seems clear that recourse cannot take place until protest has been made in respect of them all, provided nothing to the contrary results from the contents of the bill or from custom. — If the drawee is an association, it is supposed to be sufficient when protest is made against an active member. — If the drawee is an association, protest according to *Swedish* law ought to be made in respect of the person who can be sued with legal effect on behalf of the association (Chapter 11 of the Code of Procedure according to the Act of 10th July 1899). In reality, however, this rule does not differ from the one above mentioned. — If the drawee is dead, it is not thought that the holder of the bill is under any obligation to try to obtain the acceptance of his heirs in his stead. If he does not desire to obtain their acceptance, he must consequently be in a position to have recourse after protest, and also when the drawee for any reason cannot be found (§ 89 et seq.). If, on the other hand, he is willing to receive the acceptance of the heirs, such acceptance must presumably be considered as an acceptance by intervention according to § 57, from which it follows that here also there must be previous protest. — <sup>3)</sup> The reception of acceptance cannot be refused on the ground that the drawee has become bankrupt. If acceptance is refused, the holder of the bill may immediately on protest having been made, without regard to the time for payment of the bill, look to the drawer and the indorsers; compare §§ 25 and 29 (unless the bill was provided with a referee in case of need; compare §§ 56 and 61). — Acceptance with a reservation is, according to § 22, equivalent to an unconditional acceptance. — <sup>4)</sup> Whereas there can hardly be any doubt as to whether the clause "payable by" or "payable at" N. N. Bank, designates the bank as domicile, and the same opinion prevails in Norway and Sweden with regard to the clause: "payable in N. N. Bank" ("payable N. N. Bank"), Danish legal practice has shown a tendency to interpret this latter term as not designating the bank as domicile, but only as the place of payment. The principal banks of Copenhagen, therefore, in April 1903 issued a circular in which they called attention to the circumstance that it will be opportune when a domicile is indicated in bills of exchange always to use the words "payable by N. N." — <sup>5)</sup> As according to the text not only the presentment shall be made, but also the eventual protest shall have been commenced before the day for payment, it will as a consequence of the rule contained in § 21, first paragraph, be imprudent to postpone the presentment till the day immediately preceding the day for payment.

*To §§ 18 and 19.* Besides the cases indicated in these two Articles, presentment for acceptance is no longer a condition of the preservation of the rights according to the law of bills, and in the case of acceptance not giving sufficient security (§ 30), it is not necessary to take precautionary steps with a view to preserving the rights according to the law of bills.

og inden et Aar, hvis den er trukken fra eller paa sidstnævnte Steder eller noget Sted udenfor Europa. Bliver Vexlen ikke akcepteret, eller bliver Akcepten ikke dateret, skal Vexlen inden<sup>1)</sup> Forevisningsfristens Udlob protesteres, og regnes i saadant Tilfælde Forfaldstiden fra Protestdagen. Forsømmes, hvad her er bestemt, tabes Vexelretten mod Trassenten og Endossenterne.

Den Endossent, som i sit Endossement af saadan Vexel har foreskrevet en særlig Forevisningstid, er fri for Vexelansvar, hvis Fristen oversiddes.

I Forhold til den Akceptant, som ikke har dateret sin Akcept, regnes Forfaldstiden, naar Protest ikke er optagen, fra Forevisningsfristens sidste Dag.

20. I ethvert Tilfælde, hvor paa Grund af manglende Akcept Protest er optagen, skal Underretning (Notifikation) derom gives paa den Maade og under det Ansvar, som i §§ 45 til 47 fastsættes.

## Femte Kapitel.

### Om Vexlens Akcept.

21. Naar en Vexel forevises til Akcept, skal bestemt Svar, bekræftende eller nægtende, gives inden 24 Timer<sup>2)</sup>. Gives ikke Svar inden denne Tid, ansees Akcept nægtet.

Akcepten skal skrives paa Vexlen og forsynes med Akceptantens Underskrift. Gyldig Akcept kan ogsaa gives ved Akceptantens blotte Navntegning paa Vexlens Forside.

Akcept kan ikke, efterat den er tegnet paa Vexlen, med Retsvirkning udstryges, forandres eller tilbagekaldes<sup>3)</sup>.

22. Vexlen skal akcepteres efter sit Lydende uden Vilkaar eller Forbehold; dog kan Akcepten indskrænkes til en Del af Vexelsummen. Gjøres andre Indskrænkninger eller Vilkaar, anses de som uskrevne.

23. Den, som har akcepteret en Vexel, svarer efter Vexelret<sup>4)</sup> for Betaling paa Forfaldsdagen af det akcepterede Beløb.

1) Som Følge af Reglen i § 21, 1ste Pkt. vil det være uforsigtigt at opsætte den heromhandlede Forevisning til Fristens sidste Dag. — 2) Denne Frist kan dog næppe tilkomme Trassaten, naar Vexlen skal betales ved Sigt (jvf. § 32). — En Forlængelse af Fristen kan indtræde som Følge af Reglen i § 91, 2Pkt. — 3) Dette maa gælde, hvad enten Udstrøgningen er foretaget af Akceptanten eller af Vexelejeren eller med dennes Samtykke. Hvis imidlertid Vexelejeren paa Vexlen har tegnet en Erklæring om, at Akceptantens Forpligtelse er eftergivet, er denne hævet med vexelretlig Virkning; men Vexelejeren har da tabt sin Vexelret mod Trassent og Endossenter.

ad § 22. Da §en kun erklærer „Indskrænkninger eller Vilkaar“ som uskrevne, kan man næppe behandle Trassaten som Akceptant, hvor han har givet Vexlen en Paategning, hvis Mening er, at han slet ikke akcepterer. Men den Omstændighed, at en saadan Paategning i sig selv er hensigtsløs, vækker en stærk Formodning om, at Sammenhængen er den, at Trassaten først har tegnet Akcept og derefter forandret den til en Nægtelse af Akcept, og, hvis Trassaten ikke giver nogen rimelig Forklaring af Anledningen til bemeldte Paategning, kan han saaledes let blive dømt i Henhold til Reglen i § 21, 3die St. Derhos bemærkes, at enhver ikke i Loven hjemlet Paategning, som Trassaten giver Vexlen, er en retstridig Makulering af denne, der paadrager Trassaten Erstatningsansvar, forsaavidt der ved samme er opstaaet Skade, saasom Hindring i Vexlens Omsætning.

4) Se Bemærkning til § 8.

Färöarne, samt inom ett år, om den är dragen från eller på sistnämnde orter eller någon ort utom Europa. Varder vexeln icke godkänd eller bliver godkännande icke dateradt, skall vexeln före<sup>1)</sup> uppvisningstidens utgång protesteras; och räknas i sådan händelse förfallotiden från protestdagen. Försummas hvad här är stadgadt, förloras vexelrätten mot vexelgivare och öfverlåtare.

Öfverlåtare, som i öfverlåtelse af sådan vexel föreskrifvit särskild uppvisningstid, vare fri från vexelansvarighet, om den tid försittes.

I förhållande till godkännare, som icke daterat sitt godkännande, skall, i händelse protest icke skett, förfallotiden räknas från uppvisningstidens sista dag.

20. I hvarje fall, då på grund af uteblifvet godkännande protest skett, skall under rättelse (notifikation) derom gifvas på sätt och vid påföljd, som i §§ 45—47 sägs.

## Femte kapitlet.

### Om vexels godkännande.

21. När vexel uppvisas till godkännande, skall bestämt svar, jakande eller nekande, gifvas inom tjugofyra timmar<sup>2)</sup>. Gifves icke svar inom den tid, anses godkännande vägradt.

Godkännande skall skrivas på vexeln och förses med godkännarens underskrift. Giltigt godkännande kan ock lemnas medelst godkännarens blotta namnteckning på vexelns framsida.

Sedan godkännande blifvit å vexeln teeknadt, kan det icke med laga verkan utstrykas, ändras eller återkallas<sup>3)</sup>.

22. Vexel skall godkännas efter sin lydelse utan vilkor eller förbehåll; dock må godkännande inskränkas till en del af vexelsumman. Göras andra inskränkningar eller vilkor, vare de utan verkan.

23. Hvar, som vexel godkänt, svare efter vexelrätt<sup>4)</sup> för betalning af det godkända beloppet å förfallodagen.



Islands or any place outside Europe. If the bill is not accepted, or the date of acceptance is not indicated, the bill shall be protested before<sup>1)</sup> the expiration of the time for presentment, and in such case the time for payment is reckoned from the day of protest. If that which is here prescribed has been omitted, all rights according to the law of bills against the drawer and the indorsers are lost.

The indorser who in his indorsement of the bill has prescribed a specified time for presentment, ceases to be liable according to the law of bills, if such time is passed.

In respect of the acceptor who has not dated his acceptance, the time of payment is reckoned, if the bill has not been protested, from the last day for presentment.

**20.** In any case where owing to non-acceptance a bill has been protested, information (notification) of such occurrence shall be given in the manner and under the responsibility fixed according to §§ 45 to 47.

## Chapter V.

### Concerning the acceptance of bills of exchange.

**21.** When a bill of exchange is presented for acceptance, a definite answer, in the affirmative or the negative, shall be given within twenty-four hours<sup>2)</sup>. If no answer is given within this time, acceptance is considered as refused.

The acceptance shall be written on the bill and be provided with the acceptor's signature. Valid acceptance may also be given by means of the mere signature of the acceptor on the face of the bill.

The acceptance cannot, when it has once been written on the bill, be crossed out, modified or withdrawn with legal effects<sup>3)</sup>.

**22.** A bill of exchange shall be accepted according to its tenor without conditions or reservations; the acceptance may, however, be limited to a certain part of the amount of the bill. If other restrictions or conditions are made, they are considered as if they had not been written.

**23.** Any person who has accepted a bill of exchange is, according to the law of bills<sup>4)</sup>, liable to pay the accepted amount on the day for payment.

<sup>1)</sup> As a consequence resulting from the rule contained in § 21, 1st paragraph, it is imprudent to postpone the presentment here dealt with until the last day for presentment. —

<sup>2)</sup> The drawee can, however, hardly be entitled to benefit by such postponement when the bill in question is payable at sight (compare § 32). A prolongation of the delay may occur as a consequence of the rule contained in § 91, second sentence. — <sup>3)</sup> This must apply whether the crossing out has been done by the acceptor or the holder of the bill or with the consent of the latter. If, however, the holder of the bill in question has written a declaration on the face of it to the effect that the acceptor has been discharged from his obligation, such obligation is discharged according to the law of bills; but the holder of the bill has then lost his rights according to the law of bills as against the drawer and the indorsers.

To § 22. As the Article only declares "restrictions or conditions" as not written, the drawee can hardly be considered as acceptor in case he has written a note on the bill the meaning of which is that he does not accept it at all. But the circumstance that such a note in itself is objectless arouses a strong doubt whether the drawee in such a case has not at first written his acceptance and subsequently altered it to a refusal of acceptance, and, if the drawee does not give any reasonable explanation as to what has occasioned him to write such a note, he may, consequently, easily be judged in accordance with the rule contained in § 21, third paragraph. It should also be observed, that any note not authorized according to law which the drawee has written on the bill, is an illegal defacement of the bill, subjecting the drawee to payment of compensation, provided the effacement has caused damage, as, for example, if it is an obstacle to the circulation of the bill in question.

<sup>4)</sup> See the remark made on § 8.

Akceptanten er ifølge sin Akcept vexelretlig forpligtet ogsaa ligeoverfor Trassenten. Derimod har Akceptanten ikke Vexelret mod Trassenten.

24. Lyder en Vexel paa Betaling et andet Sted end der, hvor Trassaten bor, og har Trassenten ikke paa Vexlen opgivet, ved hvem Betalingen paa det andet Sted skal erlægges, skal Akceptanten tilføie det paa Vexlen. Gjør han det ikke, antages det, at han selv vil indfri Vexlen paa Betalingsstedet.

### Sjette Kapitel.

#### Om Regres for manglende eller ikke betryggende Akcept.

25. Bliver en Vexel ikke akcepteret inden den i § 21 bestemte Frist, eller indskrænkes Akcepten til en Del af Vexelsummen, er Vexelejeren, efterat Protest er optagen, berettiget til af hvilkensomhelst blandt Endossenterne eller af Trassenten mod Protestens Udlevering af Vexelret at kræve Sikkerhed for Betaling til Forfaldstid af Vexelsummen eller det ikke akcepterede Beløb tilligemed de ved den manglende eller ufuldstændige Akcept forvoldte Omkostninger.

26. Enhver Endossent har i Kraft af den for manglende eller ufuldstændig Akcept optagne Protest ligeledes Ret til mod Protestens Udlevering at kræve Sikkerhed af hvilkensomhelst blandt de foregaaende Endossenter eller af Trassenten.

27. Har en Vexelskyldner stillet en af sine Eftermænd Sikkerhed, gjælder den ogsaa til Fordel for Sikkerhedsstillerens øvrige Eftermænd, naar de fordrer saadant. Ingen af Sikkerhedsstillerens Eftermænd har Ret til at forlange yderligere Sikkerhed af nogen Vexelskyldner, medmindre det paavises, at den allerede stillede Sikkerhed er utilstrækkelig.

28. Vil Trassaten efter Protesten meddele fuldstændig Akcept, og erstatter han de ved den manglende Akcept forvoldte Omkostninger, maa Præsentanten ikke vægre sig ved at modtage Akcepten, saafremt Vexlen endnu er i hans Besiddelse. Naar Akcept saaledes er given, ophører Retten til at kræve Sikkerhed. Var saadan allerede stillet, skal den tilbageleveres. Ligeledes skal en stillet Sikkerhed gives tilbage, naar der ikke inden et Aar efter Vexlens Forfaldsdag er rejst Sag til dens Betaling mod den, som har stillet Sikkerheden, saa og naar Vexlen er indfriet eller den vexelretlige Forpligtelse paa anden Maade er ophørt.

*ad § 24.* Se Bemærkning til § 18.

*ad § 25.* Før at gøre den heromhandlede Sikkerhedsregres gældende, er Handelshavelse af Vexlen ikke nødvendig; men det er tilstrækkeligt, at der foreligger Legitimation ved Udskrift af Protestforretningen (jvf. § 82 og dansk Lov 28 Maj 1880 § 10, norsk Lov 17 Juni 1880 § 10 og den svenske K. F. af 7 Maj 1880, § 4, jvf. K. Cirkulære af 24 Sept. 1886). — Ved at søge og erholde Sikkerhed efter nærværende § antages Vexelejeren at miste Retten til at kræve Betaling for manglende Akcept efter § 29, ikke blot hos den Endossent, der har stillet Sikkerhed og dennes Eftermænd, men ogsaa hos Sikkerhedsstillerens Formænd.

*ad § 26.* At en Endossent har taget Sikkerhed efter denne §, kan ikke udelukke Vexelejeren fra at søge Betaling efter § 29.

Godkännare vare till följd af sitt godkännande äfven vexelgifvaren ansvarig efter vexelrätt. Deremot hafve godkännaren icke vexelrätt mot vexelgifvaren.

24. Är vexel stäld att betalas å annan ort än der godkännaren bor, och har ej vexelgifvaren i vexeln utsatt, af hvem betalning å den andra orten skall erläggas, sätte godkännaren det ut å vexeln. Gör han det ej, vare det så ansedt, som ville han själf inlösa vexeln på betalningsorten.

### Sjette kapitlet.

#### Om återgångstalan för uteblifvet eller osäkert godkännande.

25. Varder vexel icke godkänd inom den i § 21 stadgade tid, eller inskränkes godkännande till en del af vexelsumman, vare innehafvaren, sedan han därför protesterat, berättigad att af hvilken som helst bland öfverlåtarna eller af vexelgifvaren, mot protestens aflemnande, med vexelrätt fordra säkerhet för betalning å förfallotiden icke allena af vexelsumman eller af det icke godkända beloppet, utan ock af de genom det uteblifna eller ofullständiga godkännandet vållade omkostnader.

26. Öfverlåtare hafve, på grund af protesten för uteblifvet eller ofullständigt godkännande, likaledes rätt att, mot protestens aflemnande, fordra säkerhet af hvilken som helst bland föregående öfverlåtare eller af vexelgifvaren.

27. Har vexelgäldenär lemnat säkerhet åt någon af dem, som följa efter honom, gälle den äfven till fördel för säkerhetsgifvarens öfriga efterföljare, när de fordra sådant. Ej må någon, som följer efter säkerhetsgifvaren, fordra ytterligare säkerhet af någon vexelgäldenär, så framt det ej visas, att den redan stälda säkerheten är otillräcklig.

28. Vill den, å hvilken vexel är dragen, efter protesten meddela fullständigt godkännande, och ersätter han de genom det uteblifna godkännandet vållade omkostnader, må uppvisaren icke vägra att mottaga godkännandet, så framt vexeln ännu är i hans värje. Sedan godkännande skett, efter ty nu är sagdt, upphøre rätten att fordra säkerhet. Var sådan redan stäld, skall den återlemnas. Likaledes skall stäld säkerhet återlemnas, derest icke inom ett år efter vexelns förfallodag käromål om dess inlösen blifvit anställt emot den, som har lemnat säkerheten, så ock när vexeln infriats, eller när vexelansvarigheten på annat sätt upphört.

The acceptor is liable according to his acceptance also towards the drawer in accordance with the law of bills. On the other hand, the acceptor has no rights according to the law of bills as against the drawer.

**24.** If a bill of exchange is payable at a place other than where the drawee is domiciled, and if the drawer has not indicated in the bill by whom payment shall be made at such other place, the acceptor shall make such additional indication in the bill. If he does not do so, the presumption is that he himself engages to pay the bill at the place of payment.

#### Chapter VI.

### Concerning recourse in the case of non-acceptance or acceptance not affording sufficient security.

**25.** If a bill of exchange is not accepted within the period fixed according to § 21, or if acceptance is limited to a certain part of the amount of the bill, the holder of the bill, on having made protest, is entitled to demand security for the due payment of the amount of the bill or the amount not accepted, together with the costs incurred owing to non-acceptance or incomplete acceptance. The holder of the bill has a right to demand that such security shall be given to him by any of the indorsers or the drawer against the giving up of the protest.

**26.** Every indorser, in virtue of the protest made owing to non-acceptance or incomplete acceptance, also has a right to demand that security shall be given to him by any of the previous indorsers or the drawer against the giving up of the protest.

**27.** If a debtor on a bill of exchange has given one of his successors security, such security is also valid in favour all the other successors of the giver of the security, if they demand it. None of the successors of the giver of the security has a right to demand further security from any debtor on the bill of exchange, unless it is proved that the security which has already been given is insufficient.

**28.** If a drawee after protest is willing to give a complete acceptance, and to make good the costs incurred on account of his refusal to give acceptance, the person who presents the bill of exchange in question must not refuse to receive the acceptance, if the bill is still in his possession. When acceptance has thus been given, the right to demand security ceases. If security has already been given, it shall be given up. A security which has been given shall also be given up, when within a year of the day for payment of the bill an action with a view to payment has not been brought against the person who has given the security, as also when the bill has been paid or the liability according to the law of bills has ceased in some other manner.

*To § 24.* See note to § 18.

*To § 25.* In order to take advantage of the recourse for security here dealt with, it is not necessary to be the holder of the bill; but it is sufficient that proof of right of ownership is available by means of an exemplification of the protest made (compare § 82 and Danish Act of 28 May 1880 § 10, the Norwegian Act of 17 June 1880 § 10 and the Swedish Royal Ordinance of 7 May 1880, § 4; compare the Royal Circular of 24 Sept. 1886). — By seeking and obtaining security according to the present Article, the holder of the bill is presumed to lose his right to demand payment owing to non-acceptance according to § 29, not only against the indorser who has given security and his successors, but also against the predecessors of the person who has given security.

*To § 26.* That an indorser has taken security according to this Article cannot prevent the holder of the bill from trying to obtain payment according to § 29.

29. Har den, som paa Grund af Protest for manglende Akcept er berettiget til Sikkerhed efter §§ 25 eller 26, Vexlen i Hænde, kan han uden at afvente Forfaldstiden i Stedet for Sikkerhed strax kræve Betaling af Vexelsummen eller det ikke akcepterede Beløb, tilligemed de ved Akceptens Nægtelse forvoldte Omkostninger og Provision efter §§ 50—52. Dog kan Vexelskyldneren i Vexelsummen eller det ikke akcepterede Beløb afkorte 5 Procent aarlig Rente for Vexlens tilbagestaaende Løbetid.

Kræver Vexeleieren Sikkerhed, men vil Vexelskyldneren hellere strax paa ovennævnte Vilkaar indfri Vexlen, staar dette ham frit.

30. Er den, som har akcepteret en Vexel, forinden Forfaldstid kommen under Konkurs eller ved Eksekution funden at mangle Midler til at betale sin Gjæld, eller har han, hvis han er Handlende, standset sine Betalinger<sup>1)</sup>, og har han ikke, efter i saadan Anledning at være opfordret dertil af Vexlens Ihændehaver, stillet Sikkerhed for dens Indfrielse til Forfaldstid, ere Vexlens Eier og Endossenter, naar disse Omstændigheder godtgjøres ved Protest, berettigede til mod Protestens Udlevering at kræve Sikkerhed<sup>2)</sup> overensstemmende med §§ 25—27 hos de foregaaende Endossenter eller Trassenten.

Om saadan Protest bliver Underretning at give paa den Maade og under det Ansvar, som i §§ 45—47 fastsættes.

### Syvende Kapitel.

#### Om Vexlens Forfaldstid og Betaling.

31. Vexlen skal indfries paa Forfaldsdagen, og finde Løbedage saaledes ikke Sted.

32. En Vexel, som lyder paa Betaling ved Sigt, skal indfries ved Forevisningen. Om Tiden, inden hvilken saadan Vexel skal forevises til Betaling, og om Følgerne af Forsømmelse heraf gjælder, hvad der i § 19 er bestemt om Forevisning til Akcept af Vexler, der lyde paa Betaling efter Sigt.

33. Er Vexlens Forfaldstid bestemt til Begyndelsen af en Maaned, skal den indfries

29. Har den, som paa grund af protest för uteblifvet godkännande är berättigad till säkerhet enligt § 25 eller § 26, vexeln i händer, ege han utan att afvakta förfallotiden i stället för säkerhet strax fordra betalning af vexelsumman eller det icke godkända beloppet tillika med de genom det uteblifna godkännandet vållade omkostnader och provision enligt §§ 50—52; dock må vexelgäldenär å vexelsumman eller det icke godkända beloppet afkorta ränta derå, efter fem för hundra om året, under den tid, som vid betalningen kan återstå till vexelns förfallotid.

Fordrar vexelinnehafvare säkerhet, men vill vexelgäldenär hellre strax med ofvannämnda vilkor infria vexeln, stånde det honom fritt.

30. Har den, som godkänt vexel, före förfallotiden kommit i konkurstillstånd eller vid utmätning funnits sakna tillgång att betala sin gäld eller ock, om han är köpman, inställt sina betalningar<sup>1)</sup>, och har han ej, när den, som vexeln i händer hafver, af sådan anledning det äskat, ställt säkerhet för vexelns inlösen å förfallotiden, vare vexelinnehafvaren och öfverlåtaren, sedan förhållandet blifvit styrkt genom protest, berättigade att mot protestens aflemnande fordra säkerhet<sup>2)</sup> af föregående öfverlåtaren eller vexelgifvaren, som i §§ 25—27 sägs.

Om sådan protest skall underrättelse gifvas på sätt och vid påföljd, som i §§ 45—47 stadgas.

### Sjunde kapitlet.

#### Om vexels förfallotid och betalning.

31. Vexel skall å förfallodagen infrias; och ege förty uppskofs dagar ej rum.

32. Vexel, som lyder å betalning vid uppvisandet, varde vid uppvisandet inlöst. Om tiden, inom hvilken sådan vexel skall uppvisas till betalning, och om påföljden af uraktlåtenhet deraf gälle hvad i § 19 är stadgadt om uppvisande till godkännande af vexel, den der lyder å betalning viss tid efter uppvisandet.

33. Är vexels förfallotid bestämd till början af en månad, skall den infrias å måna-

ad § 29. Med Hensyn til denne Regres maa Reglerne i §§ 42, 48, 49 og 53—55 antages analogisk anvendelige med de af Forholdets Natur følgende Modifikationer. (Om Notifikationspligten se § 20.) En Betingelse for, at en Vexelejer kan gøre den heromhandlede Regres gældende, er naturligvis, at han har Vexlen i Hænde (jvf. § 38) med saadan Legitimation, at han efter § 39 kan give gyldig Kvittering.

<sup>1)</sup> Jvf. i saa Henseende dansk Konkurslovs § 43 jvf. § 45, norsk Konkurslovs § 4 og svensk Konkurslovs § 4. — <sup>2)</sup> Derimod anerkendes ikke nogen Betalingsregres i Anledning af ikke betryggende Akcept.

ad § 32. Da det i Forholdet til Trassent og Endossenter kun er Notarii Forevisning, der har vexelretlig Betydning, maa Vexlen altsaa, hvis Betaling ikke erholdes, protesteres de non solutione inden Udløbet af den heromhandlede Frist, saaledes at den særlige Protestfrist i § 41 ikke her kommer til Anvendelse.

ad § 33. En den 3 Marts udstedt Vexel, der lyder paa Betaling 10 Dage fra Dato, er altsaa forfalden d. 13 Marts. — Reglerne i § 33 suppleres ved Reglerne i §§ 90 og 91.

29. If the person who on account of protest for non-acceptance has a right to security according to §§ 25 or 26, has the bill in his possession, he may without awaiting the day for payment, instead of security, immediately demand payment of the amount of the bill or the amount which has not been accepted, together with the costs incurred through the refusal of acceptance and commission according to §§ 50—52. The debtor on the bill may, however, deduct from the amount of the bill or the amount for which acceptance has not been given, 5 per cent. annual interest for the remainder of the time of the running of the bill up to its date of maturity.

If the holder of the bill of exchange in question demands security, but the debtor prefers to pay the bill on the aforesaid conditions, he is at liberty to do so.

30. If the person who has accepted a bill of exchange has become bankrupt before the day for payment or by means of an execution has been found incapable of paying his debt, or if, in case he is a trader, he has suspended his payments<sup>1)</sup>, and if on having been called upon in that behalf by the holder of the bill, he has not given security for the payment of the bill on the day for payment, the holder and indorsers of the bill, when these circumstances are substantiated by a protest, have a right to demand security<sup>2)</sup> according to §§ 25—27 from the previous indorsers or the drawer against the handing over of the protest.

Information regarding such protest shall be given in the manner and under the responsibility provided by §§ 45—47.

## Chapter VII.

### The maturity and payment of bills of exchange.

31. A bill of exchange shall be paid on the day of maturity, and days of grace can consequently not be granted.

32. A bill of exchange payable at sight shall be paid on presentment. Regarding the time within which such a bill shall be presented for payment, and regarding the consequences of omitting to so present it, that which is prescribed in § 19 regarding presentment for acceptance of bills of exchange which are payable at a certain time after sight applies.

33. If the time for payment of a bill is fixed for the commencement of a month, it shall be paid on the first day of the month in question. The middle of a month

*To § 29.* With regard to this recourse the rules contained in §§ 42, 48, 49 and 53—55 are supposed to apply by way of analogy, subject to the modifications resulting from the nature of the case. (Concerning the obligation to notify, see § 20). A condition necessary for a holder of a bill taking advantage of the recourse here dealt with is, of course, that he has the bill in question in his possession (compare § 38) together with such proof of his right of ownership that he is in a position to give a valid receipt in accordance with § 39.

<sup>1)</sup> Compare in this respect the Danish Bankruptcy Act § 43 (compare § 45); the Norwegian Bankruptcy Act § 4 and the Swedish Bankruptcy Act § 4. — <sup>2)</sup> On the other hand, no recourse for payment is recognized owing to an acceptance not giving satisfactory security.

*To § 32.* As in the relations between a drawer and the indorsers only the presentment made by a notary has any importance according to the law of bills, the bill must consequently, if payment is not obtained, be protested for non-payment within the expiration of the period here dealt with, to the effect that the special period of protest contained in § 41 does not apply.

*To § 33.* Consequently, a bill of exchange issued on the 3rd of March and payable in 10 days from the date of issue, is due for payment on the 13th of March. — The rules of § 33 are supplemented by the rules contained in §§ 90 and 91.

paa Maanedens første Dag. Ved Midten af en Maaned forstaaes Maanedens femtende Dag og ved Slutningen af en Maaned dens sidste Dag.

Er Vexlens Forfaldstid bestemt til et vist Antal Dage efter Udstedelsen eller efter Sigt, medregnes ikke Udstedelses- eller Forevisningsdagen. En halv Maaned regnes lige med et Tidsrum af 15 Dage; lyder Betalingstiden paa en eller flere hele Maaneder og en halv Maaned, bliver den halve Maaned at regne sidst.

34. Er en Vexel udstedt paa et Sted, hvor der benyttes Tidsregning efter gammel Stil, skulle Tidsbestemmelserne i Vexlen ansees givne efter denne Stil, naar ikke Andet fremgaar af Vexlen.

35. Vexlen skal betales i den Myntsort, paa hvilken den lyder. Er denne ikke gangbar paa Betalingsstedet, og har Trassenten ikke ved Ordet „effektiv“ eller tilsvarende Udtryk særlig foreskrevet Betaling i den fremmede Myntsort, kan Vexelsummen erlægges i indenlandsk Mynt efter den Vexelkurs, hvortil paa det Sted, hvor Betalingen sker, eller paa nærmeste indenlandske Vexelplads Vexler, udstedte i den fremmede Myntsort og lydende paa Betaling ved Sigt, kjøbes paa den Tid, Indfrielsen sker.

36. Indfrier Akeptanten ikke Vexlen, naar den paa eller efter Forfaldsdagen forevises ham til Betaling<sup>1)</sup>, er han pligtig at svare 6 Procent aarlig Rente af Vexelsummen fra Forevisningsdagen<sup>2)</sup> samt til at give fuld Erstatning for de Vexelejeren ved Forhalingen forvoldte Omkostninger<sup>3)</sup>. Skal Betalingen ske efter Vexelkurs, og er denne falden<sup>4)</sup> efter Vexlens Forevisning, beregnes den Kurs, som gjaldt paa Forevisningsdagen; dog kan Vexeleieren, hvis han har forhalet Vexlens Forevisning, ikke beregne højere Kurs end den, der gjaldt paa Forfaldsdagen.

37. Vexelejeren maa ikke vægre sig ved at modtage Afdrag paa Vexelsummen.

38. Vexelskyldneren er ikke pligtig at betale, medmindre Vexlen udleveres ham med

dens första dag. Med midten af en månad förstås månadens femtonde dag och med slutet af en månad dess sista dag.

År vexels förfalltid utsatt i visst antal dagar efter utställandet eller efter uppvisandet, varde dagen för utställandet eller uppvisandet ej räknad. Half månad räknas lika med femton dagar. Lyder betalningstiden på en eller flere hela månader jemte en half månad, varde den halfva månaden räknad sist.

34. År vexel utgifven å ort, hvarest tidsräkning efter gamla stilen begagnas, anses tidsbestämmelserna i vexeln gifna efter nämnda stil, derest icke annat af vexeln framgår.

35. Vexel skall betales i det myntslag, hvarå den lyder. År det mynt ej gångbart på betalningsorten, och har icke vexelgifvaren genom ordet „effektiv“ eller motsvarande uttryck särskildt föreskrifvit betalning i det främmande myntslaget; då må vexelsumman gäldas i inländskt mynt efter den vexelkurs, hvartill på den ort, der betalningen sker, eller på närmaste inländska vexelplats vexlar, utställda i det främmande myntslaget och lydande på betalning vid uppvisandet, köpas å den tid, inlösen sker.

36. Infriar icke godkännare vexel, när den å eller efter förfallodag uppvisas till betalning<sup>1)</sup>, vare han skyldig att å vexelsumman gälda ränta efter sex för hundra om året från den dag vexeln till betalning honom förevistes<sup>2)</sup> så ock att gifva full ersättning för de vexelinnehafvaren genom dröjsmålet åbragta kostnader<sup>3)</sup>. Skall betalning ske efter vexelkurs och har den efter vexels uppvisande fallit<sup>4)</sup>, varde den kurs beräknad, som gälde när uppvisandet skedde; dock må vexelinnehafvaren, om han dröjt med vexels uppvisande, icke beräkna högre kurs än den, som gälde å förfallodagen.

37. Vexelinnehafvaren må ej vägra att mottaga afbetalning å vexelsumman.

38. Vexelgäldenär vare ej skyldig betala, der ej vexeln till honom aflemnas med

1) Der er selvfølgelig her underforstaaet: „og ej heller gør lovligt Tilbud“. — 2) Eller, naar ingen tidligere behørig Forevisning er oplyst, da fra Stævningsdagen. — 3) Saasom Protestomkostninger, Porto, efter Omstændighederne Inkassationsaler m. v. — 4) Er den stegen, kan Vexelejeren selvfølgelig forlange den højere Kurs. § 36 afgør overhovedet kun, hvad Vexelejeren kan forlange som Vexelkreditør og udelukker ikke, at yderligere Erstatning efter almindelige civile Retlige Regler kan søges hos Akeptanten paa Grund af hans Mora. Saaledes vil der kunne være Spørgsmaal om, at Vexelejeren kan kræve Godtgørelse for Proceesomkostninger under forgesvægs Søgemaal mod de Regrespligtige, nemlig forsaaavidt Akeptanten særlig har forvoldt, at Vexelejeren ikke strax anlægger Sag mod ham, men mod de andre Vexelskyldnere. Derhos maa fremhæves, at § 36 kun kan antages at angaa Akeptantens Ansvar overfor sidste Vexelejer, medens hans Ansvar overfor Endossenterne og Trassenten, naar disse pligtmæssig have indfriet Vexlen, maa bestemmes efter Analogien af § 52. Derimod maa Endossenter og Trassent, som uden Pligt dertil maatte have indfriet Vexlen, være stillede som sidste Vexelejer.

ad § 37. Denne Regel kan ifølge sin Plads ikke antages at komme til Anvendelse ogsaa under Vexelregressen, ligesom den vistnok heller ikke gælder, naar Trassatus først tilbyder delvis Betaling, efter at der er optaget Protest for manglende Betaling.

ad § 38. Derimod kan Akeptanten ikke stille Protests Udlevering som Betingelse for at indfri Vexlen, men højst som Betingelse for at betale Protestomkostninger.

is understood to be the fifteenth day of the month in question, and the end of a month its last day.

If the day for payment of a bill is fixed at a certain number of days after its issue or after sight, the day of issue or presentment is not included. One half month is calculated as equal to a period of fifteen days; if a bill is payable in one or more full months and one half month, the half month is calculated last.

**34.** If a bill of exchange has been issued at a place where the calendar of the old style is in use, the indications as to time in such bill are considered as having been made in accordance with this style, when nothing to the contrary is indicated by the bill in question.

**35.** A bill of exchange shall be paid in the currency in which it has been issued as payable. If this is not the currency of the place of payment, and if the drawer has not by means of the word "effective" or some other corresponding expression especially prescribed payment in the foreign currency, the amount of the bill may be paid in home currency in accordance with the rate of exchange at which at the place of payment, or at the nearest home place of exchange, bills of exchange issued in the foreign currency and payable at sight are bought at the time when the bill in question is paid.

**36.** If the acceptor does not pay the bill, when, on or after the day for payment, it is presented to him for payment<sup>1)</sup>, he is bound to pay 6 per cent. annual interest on the amount of the bill from the day of presentment<sup>2)</sup>, and to give full compensation for the costs<sup>3)</sup> incurred by the owner of the bill owing to the delay. If payment is to be made according to the current rate of exchange, and if this has fallen<sup>4)</sup> since the presentment of the bill, the rate which obtained on the day of presentment is used for calculation; the holder of the bill, however, if he has delayed the presentment of the bill, must not make such calculations at a higher rate than that which obtained on the day for payment.

**37.** The holder of a bill must not refuse to accept part payments of the amount of the bill.

**38.** The debtor of a bill is not bound to pay unless the bill in question is handed over to him in a receipted state. If he pays part of the amount of the bill, the part

<sup>1)</sup> There is of course implied: "and does not make any lawful offer". — <sup>2)</sup> Or when no regular previous presentment is proved, then from the day of the demand. — <sup>3)</sup> As, for example, costs of protest, postage, according to circumstances, fees of collection, etc. — <sup>4)</sup> If it has risen, the holder of the bill may of course demand the higher rate. § 36 only decides in a general manner that which the holder of the bill may claim as creditor of the bill and does not exclude further compensation according to the ordinary rules of the Civil Code from being sought from the acceptor on account of his responsibility for the delay. There may, consequently, be a question whether the holder of the bill is entitled to demand compensation for the costs of process in case of an ineffectual action brought against those persons who are liable by way of recourse, particularly in so far as the acceptor has specially brought about the circumstance that the holder of the bill does not immediately bring an action against him, but against the other persons liable on the bill. It must also be pointed out that § 36 can only be supposed to affect the liability of the acceptor towards the *last* holders of the bill, whereas his liability towards the indorsers and the drawer who have paid the bill in accordance with their obligation, must be determined in analogy to § 52. On the other hand, indorsers and the drawer who, without any obligation to do so, may have paid the bill, must be placed on an equal footing with the last holder of the bill.

To § 37. This rule cannot be supposed according to the place it occupies to apply also during the recourse of the bill, and similarly, it certainly does not apply in case the drawer does not offer partial payment until protest has been made for non-payment.

To § 38. On the other hand, the acceptor cannot make the handing over of the protest a condition of the payment of the bill, but at most a condition of the payment of the costs.

paategnet Kvittering. Betaler han en Del af Vexelsummen, skal Afbetalingen paategnes Vexlen, og, saafremt det forlanges, særskilt Kvittering meddeles ham paa en Afskrift af Vexlen.

39. Naar Forfaldstid er kommen, er Vexlens Ihændehaver berettiget til at kræve og oppebære Betaling for Vexlen, saafremt han ved Indholdet af dens Text eller ved en behørig sammenhængende og til ham fortsat Række af fuldstændige eller Blanko-Endossementer viser sig at være Vexlens Ejer. Den, som da indfrier Vexlen, er ikke pligtig at prove Endossementernes Ægthed.

40. Indfries en Vexel for Forfaldsdag, og viser det sig senere, at Betalingen er erlagt til en uretmæssig Ihændehaver, svarer den, der indfriede Vexlen, for deraf følgende Skade.

### Ottende Kapitel.

#### Om Regres paa Grund af manglende Betaling.

41. Vil Vexeleieren bevare sin Ret til Regres for manglende Betaling mod Trassanten og Endossenterne, skal han forevise den forfaldne Vexel, hvad enten den forud er akcepteret eller ikke, til Betaling for Trassaten<sup>1)</sup> og, hvis denne ikke erlægger fuld Betaling, optage Protest<sup>2)</sup> (de non solutione) paa Forfaldsdagen eller senest paa anden Søgne-

påteeknadt qvitto. Betalar han en del af vexelsumman, varde afbetalningen å vexeln teeknad, så oek, om det åskas, særskildt qvitto honom meddeladt å en afskrift af vexeln.

39. Då förfallotid inne är, vare den, som vexeln i händer hafver, berättigad att fordra och uppbära betalning för vexeln, så framt han genom innehållet af dess text eller genom behörigen sammanhängande och till honom fortgående följd af fullständiga öfverlåtelse eller öfverlåtelse in blanco visar sig vara rätt innehafvare af vexeln. Ej vare den, som då infriar vexeln, förbunden pröfva, om öfverlåtelserna äro äkta.

40. Infrias vexel före förfalldagen, och visar sig sedan, att betalning erlagts till obehörig innehafvare, svare då den, som vexeln inlöst, för deraf uppkommande skada.

### Åttonde kapitlet.

#### Om återgångstalan för bristande betalning.

41. Vill vexelinnehafvare emot vexelgifvaren och öfverlåtare bevara sin rätt till återgångstalan för bristande betalning, skall han, ehvad vexeln förut blifvit godkänd eller ej, till betalning uppvisa den förfallna vexeln för den, å hvilken vexeln är dragen<sup>1)</sup>, samt, om denne icke erlægger full betalning, därför protestera<sup>2)</sup> (de non solutione) å förfalldagen

ad § 39. Reglen angaar direkte kun Forholdet til Trassatus; men den i §en angivne Legitimation maa ogsaa ellers være tilstrækkelig. Derimod er det tvivlsomt, om man kan gaa videre og statuere, at, naar Vexlen er forsynet med Kvittering fra den efter Vexlens Udvisende som Vexelejer Berettigede, bør enhver Ihændehaver anses som legitimeret til at kræve Betaling. Svensk Højesteret har ikke villet anerkende en saadan Sætning. [Enligt svensk rätt må antagas, att, så länge en handling har karaktären af vexel, innehafvaren endast kan legitimera sig enligt § 39 vexellagen, men att, när handlingen förlorat denna karaktär, legitimationen bör bestämmas enligt de för löpande och icke löpande skuldebref gällande regler. Är handlingen i detta senare fall stäld till viss man eller order, legitimerar själfva innehafvet utan endossement.] Sædvanemæssig er den Regel fastslaaet, at den, der ifølge en Vexels Udvisende engang har haft Legitimation efter Vexellovens § 39, paany bliver legitimeret som Vexelejer, naar han har Vexlen i Hænde med de efterfølgende Endossementer overstregne, forudsat at ogsaa denne efterfølgende Endossementsrække er i Orden. Selvfølgelig have ogsaa de Personer Legitimation, der have uafbrudt Endossementsrække fra den ifølge Udstregningen legitimerede. Derimod kan det ikke antages at have vundet sædvanemæssig Hjemmel at betragte den Ihændehaver af Vexlen, der, hvis de efterfølgende Endossementer vare udstregne, vilde være legitimeret, som legitimeret, ogsaa naar saadan Udstregning ikke har fundet Sted. Praxis synes i hvert Fald at nægte denne Sætning Anerkendelse, selv om Ihændehaveren fremlegger Protest, i alt Fald naar Indstevnte er udeblevet og Citanten ikke særlig har asse-reret, at han har erhvervet Vexlen ved Indfrielse. Udstregninger kunne ikke hjælpe den Ihændehaver, som ikke efter Vexlens Udvisende har været Ejer; et fuldstændigt Endossement kan ikke ved Udstregning af Endossatarens Navn omdannes til et Blankoendossement, og, naar et Blankoendossement er efterfulgt af andre Endossementer, er det at betragte som udfyldt, og Udstregning af de efterfølgende Navne giver ikke Ihændehaveren Legitimation efter Reglerne om Blankoendossement. Da Udstregning af Endossent-Navn ogsaa finder Sted som Udtryk for, at Vexelejeren eftergiver Vexelforpligtelsen (§ 49), taber den i øvrigt Legitimerede ikke sin Legitimation ved Udstregning af en eller flere af de foregaaende Endossenters Navne. Overstregning, der gør det Overstregede ulæseligt, vil i Almindelighed gøre Vexlen ubrugelig.

<sup>1)</sup> At Trassaten selv maatte være Vexelejer, gør ej de omhandlede Skridt uformødne. —

<sup>2)</sup> At Akceptanten er kommet under Konkurs forinden Forfaldsdagen, gør ikke Protest unødvendig.



payment shall be noted on the bill, and a special receipt shall be given to him on a copy of the bill, if he demands it.

39. When the day for payment has come, the holder of a bill of exchange is entitled to demand and obtain the payment of the bill, provided that according to its contents or a continuous chain of complete indorsements or indorsements in blank, he proves to be the legitimate owner of the bill. The person who then pays the bill, is not bound to verify the genuineness of the indorsements.

40. If a bill of exchange is paid before its maturity, and if it is subsequently proved that payment has been made to an illegitimate holder, the person who paid the bill is responsible for the damage arising from such occurrence.

### Chapter VIII.

#### Recourse by reason of non-payment.

41. If the holder of a bill of exchange wishes to uphold his right of recourse for non-payment against the drawer and the indorsers, he shall present the bill when it is due, whether it has previously been accepted or not, to the drawee for payment<sup>1)</sup>, and if the drawee does not make payment in full, shall make protest<sup>2)</sup> (for non-payment) on the day of maturity or at the latest on the second business day after the day of maturity. Such presentment and protest are, however, unnee-

*To § 39.* The rule only concerns directly the relation with the drawee; but the proof of ownership indicated in the § is also sufficient generally. On the other hand, it is *doubtful* whether we may go further and state that when a bill is provided with a receipt from the person who according to the tenor of the bill is the legitimate owner thereof, *any holder* ought to be considered as having sufficient proof of ownership to demand payment. The *Swedish* Supreme Court has not been willing to accept such a point of view. (According to *Swedish* law it is admitted that so long as an instrument has the nature of a bill of exchange, the holder may only prove his right of ownership according to § 39 of the Bills of Exchange Act, but that when the instrument has lost this quality, the proof must be decided according to the rules applicable to notes of hand issued payable to bearer and not to bearer, respectively. If the instrument in this latter case has been issued payable to a certain person or his order, the mere possession of such instrument without indorsement is sufficient proof.) The rule has been established by custom that the person who according to the tenor of a bill has once had proof of his right of ownership according to § 39 of the Bills of Exchange Act, regains proof of his ownership of the bill when he has the bill, with the subsequent indorsements crossed out, in his possession, provided that this subsequent chain of indorsements is also in order. Of course those persons also have sufficient proof of their right of ownership, who have an unbroken chain of indorsements from the person who holds a proof of ownership according to the crossing out. On the other hand, it cannot be considered as established by general custom that the holder of a bill of exchange who, *if* the subsequent indorsements were crossed out, would have the proof of ownership, as having sufficient proof of ownership *also* when such crossing out has *not* taken place. At any rate practice seems to refuse recognition to this point of view even if the holder presents a protest, in any case when the defendant has not appeared and the plaintiff has not specially asserted that he has acquired the bill of exchange in question by way of payment. Crossing out once or several times is of no avail to the holder who according to the tenor of the bill has not been owner; a special indorsement cannot by means of crossing out the name of the indorsee be transformed into an indorsement in blank, and when an indorsement in blank is succeeded by other indorsements, it is to be considered as a special indorsement, and the circumstance that the subsequent names have been crossed out does not give the holder the proof of his ownership according to the rules of indorsements in blank. As the crossing out of the name of an indorser also takes place as an expression of the fact that the holder of the bill renounces his right against him according to the bill (§ 49), the person who in other respects can prove his right of ownership does not lose this right by crossing out the names of one or more of the previous indorsers. Crossing out in such a manner as to make the name which has been crossed out illegible, generally makes the bill in question unfit for circulation.

<sup>1)</sup> That the drawee himself is the holder of the bill does not make the steps mentioned superfluous. — <sup>2)</sup> That the acceptor has become bankrupt before the day of maturity does not make protest unnecessary.

dag efter denne. Saadan Forevisning og Protest er dog ufornoden, saafremt Protest for manglende Akecept forud er optagen samt derhos Vexlen er indfriet overensstemmende med § 29 eller Sag i Medfor af samme § reist til dens Betaling.

42. En Opfordring til ikke at optage Protest („uden Protest“, „uden Omkostninger“ eller desl.) fritager fra Forpligtelsen til at protestere, men ikke fra Forpligtelsen til i rette Tid at forevise Vexlen til Betaling. Udebliver Betalingen, er Vexeleieren pligtig til at give Underretning derom paa den Maade og under det Ansvar, som i §§ 45—47 fastsættes<sup>1)</sup>. Paastaar en Vexelskyldner, at Forevisning ikke har fundet Sted i rette Tid, paahviler det ham at bevise saadant. Fra Forpligtelsen til at erstatte Protestomkostninger, naar Protest uanset Opfordringen er skeet, er han ikke fritagen.

43. Er Vexlen domicilieret, skal den forevises paa Betalingsstedet for den, ved hvem Betalingen skal erlægges (Domiciliaten), eller, hvis en saadan ikke er nævnt paa Vexlen, for Akeptanten<sup>2)</sup> selv. Opnaaes ikke Betaling, eller kan den, for hvem Vexlen skal forevises, ikke træffes paa Betalingsstedet, skal Vexeleieren, saafremt han vil bevare sin Ret til Regres mod Trassenten og Endossenterne, dersteds optage Protest overensstemmende med de i § 41 givne Forskrifter<sup>3)</sup>. Skal Betalingen ske ved en Anden end Akeptanten, og forsømmer Vexeleieren at optage Protest hos ham, tabes Vexelretten ogsaa mod Akeptanten.

44. Til Bevaring af Vexelret mod Akeptanten udfordres, med Undtagelse af det i § 43 nævnte Tilfælde, hverken Vexlens Forevisning til Betaling eller Optagelse af Protest.

45. Ihændehaveren<sup>4)</sup> af en for manglende Betaling protesteret Vexel skal inden to Sogndage efter den Dag, da Protesten blev optagen, give skriftlig Underretning (Notifikation) om Protesten til den nærmeste af sine Formænd, ved hvis Navn paa Vexlen Stedsbetegnelse findes anført<sup>5)</sup>.

Denne Forpligtelse ansees fyldestgjort, naar skriftlig Underretning inden nævnte Tidsfrist er indleveret til Posten eller, hvor Post ikke gaar, paa anden forsvarlig Maade afsendt.

Enhver om Protesten underrettet Endossent<sup>6)</sup> er pligtig til inden to Sogndage efter Underretningens Modtagelse paa samme Maade at give Underretning til sin nærmeste For-

eller sist å andra sökendagen derefter. Sådan uppvisning och protest vare dock icke af nöden, der protest för uteblifvet godkännande förut skett samt derjemte vexeln är vorden enligt § 29 inlöst eller på grund af stadgandet i samma § käromål blifvit anställt om vexelns betalning.

42. Uppmaning att ej protestera („utan protest“, „utan kostnad“ eller dylikt) fritage från skyldighet att protestera, men icke från skyldighet att i rätt tid uppvisa vexeln till betalning. Uteblifver betalningen, vare vexelinnehafvaren skyldig att derom gifva under rättelse på sätt och vid påföljd, som i §§ 45—47 sägs<sup>1)</sup>. Påstår vexelgäldenär, att uppvisande icke egt rum i rätt tid, åligger det honom att bevisa sådant. Från skyldighet att ersätta protestkostnad, när oakadt uppmeningen protest skett, vare han icke fritagen.

43. Är vexel stäld att betalas å annan ort än der vexelbetalaren bor, skall vexeln å betalningsorten uppvisas för den, af hvilken betalningen skall erläggas (domiciliaten), eller der en sådan ej är i vexeln nämnd, hos godkännaren<sup>2)</sup> själf. Erhålles ej betalning, eller kan den, för hvilken vexeln borde uppvisas, icke träffas å betalningsorten; då skall vexelinnehafvaren, så framt han vill bevara sin rätt till återgångstalan emot vexelgifvaren och öfverlåtare, på den ort protestera, efter ty i § 41 sagdt är<sup>3)</sup>. Skall betalningen erläggas af annan man än godkännaren, och försummar vexelinnehafvaren att hos den man protestera, förloras vexelrätten äfven emot godkännaren.

44. För bevarande af vexelrätt emot godkännaren erfordras, med undantag af det i § 43 nämnda fall, hvarken vexelns uppvisande till betalning, ej heller protest.

45. Innehafvare<sup>4)</sup> af en för bristande betalning protesterad vexel skall inom tvenne sökendagar efter den dag, då protesten skett, gifva skriftlig underrättelse (notifikation) om protesten till den honom närmast föregående vexelgäldenär, vid hvars namn å vexeln uppgift om ort finnes<sup>5)</sup>.

Denna skyldighet må anses uppfylld, när skriftlig underrättelse inom nämnde tid blifvit inlemnad å posten eller, der post ej går, på annat ändamålsenligt sätt afsänd.

Hvarje om protesten underrättad öfverlåtare<sup>6)</sup> vare pligtig att inom tvenne sökendagar efter underrättelsens mottagande på lika sätt underrätta den honom närmast före-

1) Notifikationsfristen maa i saa Fald regnes fra det sidste Tidspunkt, paa hvilket lovlig Protest kunde være foretaget. — 2) Men hvis i en domicilieret Vexel Domiciliaten ikke er nævnt, og Vexlen ikke er akecepteret, kan Forevisning til Betaling og Protest undlades, idet en saadan Vexel — hvis Vexelregressen skal være bevaret — ifølge § 18 tidligere maa have været forevist til Akecept og protesteret, og det vilde være hensigtsløst at paalægge Vexeleieren ved Forfaldstid paa Betalingsstedet at opsoge den efter Vexlens Indhold andetsteds boende Trassat. — 3) Protest for Domiciliaten maa finde Sted, selv om denne selv er Vexelejer (Deklarationsprotest). — 4) „Ihændehaveren — skal“ d. v. s. Vexelejeren skal (enten selv eller ved Fuldmægtig). — 5) Altsaa i hvert Fald til Trassenten, jvf. § 1. — 6) d. v. s. enhver om Protesten pligtig maa sig underrettet Endossent, men ikke Regresspligtige, som Vexelejeren har givet Underretning uden at være pligtig dertil.

essary if a protest for non-acceptance has previously been made, and the bill has been paid in accordance with § 29 or an action founded on the same § has been brought with a view to enforcing payment.

**42.** An invitation not to make protest ("without protest", "without costs" etc.) dispenses with the obligation of protesting, but not with the obligation to present the bill for payment in due time. If payment is not made the holder of the bill is bound to give notice to this effect in the manner and under the responsibility which are prescribed in §§ 45—47<sup>1)</sup>. If a debtor on a bill of exchange maintains that presentment has not taken place in due time, it is incumbent on him to prove it. He is not discharged from the obligation to reimburse the costs of protest when protest has been made in spite of the invitation not to make it.

**43.** If a bill of exchange is issued payable at a place other than that of the domicile of the payee, it shall be presented at the place of payment to the person by whom payment is to be made (the domicilee), or if such a person is not mentioned in the bill, to the acceptor<sup>2)</sup> himself. If payment is not obtained, or if the person to whom the bill is to be presented cannot be found at the place of payment, the holder of the bill, if he wishes to maintain his right of recourse against the drawer and the indorsers, shall there make protest according to the provisions in § 41<sup>3)</sup>. If payment is to be made by a person other than the acceptor, and the holder of the bill omits to make protest against him, the right according to the law of bills is also lost as against the acceptor.

**44.** It is not necessary, in order to preserve the right in accordance with the law of bills against the acceptor, except in the case mentioned in § 43, to present the bill for payment or to make protest.

**45.** The holder<sup>4)</sup> of a bill protested on account of non-payment shall, within two business days from the day on which the protest was made, give notice of the protest in writing (notification) to his nearest predecessor whose name has been accompanied in the bill by the indication as to place<sup>5)</sup>.

This obligation is considered as fulfilled when notice in writing within the period mentioned has been delivered to the post, or, where there is no postal service operating, has been sent in some other satisfactory manner.

Any indorser<sup>6)</sup> who has been notified of the protest is bound, within two business days of the receipt of the notification, in the same manner to notify his nearest predecessor whose name is accompanied by the indication of place in the bill. Simi-

<sup>1)</sup> The period of notification in such case must be calculated from the time when lawful protest might have been made. — <sup>2)</sup> But if in a domiciled bill the domicilee is not mentioned, and if the bill in question has *not* been accepted, presentment for payment and protest may be omitted, to the effect that such a bill — if the right of recourse is to be preserved — must according to § 18 have previously been presented for acceptance and protested, and it would be objectless to impose the obligation on the holder of the bill on its maturity to find out at the place of payment the drawee, who, according to the contents of the bill, is domiciled at another place. — <sup>3)</sup> Protest must be made at the residence of the domicilee even if this person is himself the holder of the bill (protest by means of a declaration). — <sup>4)</sup> "The holder — shall", i. e. the holder of the bill shall (either himself or by means of an agent). — <sup>5)</sup> Consequently, in any case, to the drawer; compare § 1. — <sup>6)</sup> I. e. any indorser who has been *duly* notified of the protest, but not a party liable by way of recourse whom the holder of the bill has notified without being bound to do so.

mand, ved hvis Navn Stedsbetegnelse findes anført paa Vexlen. Ligeledes er den Trassent, som har modtaget Underretning om, at en domicilieret Vexel er protesteret hos den, ved hvem Betalingen skal erlægges, forpligtet til herom at underrette Akeptanten.

46. Den, som forsømmer at give saadan Underretning, som i § 45 er foreskreven, svarer de Formænd, der som Folge deraf ere forbigaaede, for den ved Forsømmelsen forvoldte Skade. Han kan af dem ikke kræve Godtgjørelse for Udgifter, men er kun berettiget til Vexelsummen med 5 pCt. aarlig Rente fra den Dag, Sag til Betaling rejses.

47. Foreviser den, som var forpligtet til at give Underretning, Postattest om, at han har indleveret Brev til vedkommende Formand, gjælder dette som Bevis for, at Underretning paa den Tid, Postattesten opgiver, er bleven afsendt til Formanden, medmindre det godtgøres, at Brevet havde et andet Indhold.

48. Enhver Vexelskyldner<sup>1)</sup> har mod at erlægge Vexelsummen med Renter og Omkostninger<sup>2)</sup> Ret til at faa den protesterede Vexel med paategnet Kvittering tilligemed Protesten udleveret af Vexelejeren<sup>3)</sup>.

49. Regressogsmaal for manglende Betaling kan paa een Gang rejses mod flere eller alle Vexelskyldnere eller særskilt mod hvilken som helst af dem. Vexelejeren er ikke bunden ved Endossementernes Rækkefølge eller ved det Valg, han engang har gjort.

Er Trassentens eller nogen Endossents Navn af Vexelejeren eller med hans Samtykke udstroget paa Vexlen, er en saadan Vexelskyldner saavel som alle hans Eftermænd fri for Vexelansvarlighed.

50. I Tilfælde af Regres paa Grund af manglende Betaling er Vexelejeren berettiget til at fordre:

- den ubetalte Vexelsum med 6 pCt. aarlig Rente fra Vexlens Forfaldsdag,
- Erstatning for Protestomkostninger, Porto og andre nødvendige Udgifter; samt
- Provision<sup>4)</sup> af  $\frac{1}{3}$  pCt. af Vexelsummen.

51. Lyder Vexlen paa udenlandsk Mynt, forholdes med Hensyn til Betalingen i inden-

gående vexelgäldenär, vid hvars namn å vexeln uppgift om ort finnes. Vexelgifvare, hvilken mottagit underrättelse, att vexel, som är stäld att betalas å annan ort än der godkännaren bor, blifvit protesterad hos den, af hvilken betalning skall erläggas, vare likaledes pligtig att härom underätta godkännaren.

46. Hvar, som försummar att gifva sådan underrättelse, som i § 45 sägs, svare den eller de föregående vexelgäldenärer, som till följd deraf saknat underrättelse, för den genom försummelsen vållade skada. Han må af dem ike fordra godtgörelse för utgifter, utan vare blott berättigad att erhålla vexelsumman jemte ränta efter fem för hundra om året från den dag, betalning sökes.

47. Företar den, som var pligtig gifva underrättelse, intyg från postanstalt derom, att han inlemnadt bref till föregående vexelgäldenär, gälle det såsom bevis, att å den tid, intyget innehåller, underrättelse blifvit till vexelgäldenären afsänd, så framt ej styrkt varder, att brefvet haft annat innehåll.

48. Hvarje vexelgäldenär<sup>1)</sup> ege, mot erläggande af vexelsumman jemte ränta och omkostnader<sup>2)</sup>, rätt att af vexelinnehafvaren ntbekomma den protesterade vexeln med påtecknadtt qvitto tillika med protesten<sup>3)</sup>.

49. Återgångstalan för bristande betalning må anställas på en gång emot flere eller alla vexelgäldenärer eller särskildt emot hvilken som helst af dem. Vexelinnehafvare vare ej bunden vid öfverlåtelsearnas ordning eller det val, han en gång gjort.

Är af vexelinnehafvaren eller med hans samtycke vexelgifvarens eller någon öfverlåtares namn utstruket å vexeln, vare sådan vexelgäldenär, äfvensom öfverlåtare, hvilka följa efter honom, frie från vexelansvarighet.

50. Vid återgångskraf på grund af bristande betalning för vexeln ege vexelinnehafvaren rätt att bekomma:

- den obetalda vexelsumman jemte ränta derå efter sex för hundra om året från vexelns förfallodag;
- ersättning för protestkostnader, postpenningar och andra nödiga utgifter; samt
- provision<sup>4)</sup> till en tredjedel för hundra af vexelsumman.

51. Lyder vexeln på utländskt mynt; gånge med betalningen deraf i inländskt mynt,

ad § 46. „Han kan af dem“ d. v. s. af de Formænd, der selv middelbart eller umiddelbart have Krav paa Underretning. Naar Stedsbetegnelse kun findes ved Trassenten, og Vexelejeren har undladt Notifikation til ham, kan han altsaa hos Endossenterne indkræve den hele Regressfordring efter Vexellovens § 50, og Endossenterne kunne atter holde sig til Trassenten efter § 52, hvorefter denne maa søge Erstatning hos Vexelejeren efter § 46, 1ste Pkt. Det fremgaar af nærværende §, at Undladelse af Notifikation om Forevisning eller Protest ikke medfører selve Vexelrettens Fortabelse.

<sup>1)</sup> Deriblandt ogsaa Akeptanten. I øvrigt antages Beføjelsen ogsaa at tilkomme Trassatus. — <sup>2)</sup> D. v. s. det, der efter §§ 50 og 52 tilkommer Vexelejeren, dog med Undtagelse af Provisionen, idet Vexelejeren sparer Ulejligheden ved Regressen derved, at Skyldneren opsøger ham. — <sup>3)</sup> Reglen er kun udtrykkelig givet med Hensyn til den for manglende Betaling protesterede Vexel, men maa anvendes analogisk med Hensyn til den for manglende Akept protesterede Vexel. — <sup>4)</sup> Nemlig som Godtgørelse for den ved Regressen forvoldte personlige Ulejlighed.

larly, the drawer who has received a notification regarding the circumstance that a domiciled bill has been protested at the place of the person by whom payment is to be made, is bound to notify the acceptor of this fact.

46. A person who neglects to give such notice as is prescribed in § 45, is responsible to the predecessors who owing to such circumstance have been omitted, for the damage caused by the omission. He is not entitled to demand reimbursement from them of expenses incurred, but only the amount of the bill with 5 per cent. annual interest from the day on which an action is brought with a view to obtaining payment.

47. If a person who was bound to give notice produces a postal certificate establishing that he has sent a letter directed to the predecessor in question, the certificate is considered proof that notice was sent to the predecessor at the time which the postal certificate indicates, unless it is proved that the letter related to another object.

48. Any debtor<sup>1)</sup> on a bill of exchange has, on payment of the amount of the bill with interest and costs<sup>2)</sup>, a right to have the protested bill with a receipt appended together with the protest handed over to him by the holder of the bill<sup>3)</sup>.

49. An action of recourse by reason of non-payment may be brought at the same time against several or all the debtors on a bill or separately against any one of them. The holder of a bill is not bound to follow the sequence of the indorsements, nor is he bound by the choice he has once made.

If the name of the drawer or of any indorser has been crossed out by the holder of a bill or with his consent, the person liable on the bill whose name is so crossed out, as well as all his successors, are discharged from liability according to the law of bills.

50. In the case of recourse by reason of non-payment the holder of the bill has a right to claim:

The unpaid amount of the bill with 6 per cent. annual interest from the day of maturity;

Reimbursement of the costs of protest, postage and other necessary expenses; and

$\frac{1}{3}$  per cent. commission<sup>4)</sup> on the amount of the bill.

51. If a bill is payable in foreign currency, the payment in the currency of the home country is made in accordance with the rules of § 35; payment, however,

*To § 46.* "He is not entitled to demand reimbursement from them" i. e. from those predecessors who themselves are entitled directly or indirectly to be notified. When an indication as to place is only found by the name of the drawer, and the holder of the bill has omitted to notify him, the holder may consequently advance his whole claim of recourse according to § 50 of the Bills of Exchange Act against the indorsers, and the indorsers on their part may advance their claims against the drawer according to § 52, whereupon the latter must try to obtain damages from the holder of the bill according to § 46, 1st sentence. It results from the present Article that the omission of notification regarding presentment or protest does *not* bring about the loss of the right itself according to the law of bills.

<sup>1)</sup> Amongst whom also the acceptor. It is generally considered that the drawee also is entitled to this right. — <sup>2)</sup> I. e. that which according to §§ 50 and 52 is due to the holder of the bill, with the exception however of commission, the holder of the bill being saved from the trouble of recourse by the circumstance that the debtor on the bill calls on him. — <sup>3)</sup> The rule is expressly enacted only in respect of a bill protested by reason of non-payment, but by way of analogy must be applied in respect of a bill protested for non-acceptance. — <sup>4)</sup> I. e. as compensation for the personal trouble caused by the recourse.

landsk Mynt, saaledes som det er fastsat i § 35; dog skal Betalingen, hvis Kursen er falden efter Vexlens Forfaldsdag, erlægges efter den Kurs, som da var gjældende.

52. Har en Endossent saaledes indløst Vexlen, omfatter hans Regresfordring:

- hele det Beløb, han overensstemmende med §§ 50 og 51 har været nødt til at betale, samt 6 pCt. årlig Rente deraf fra Betalingsdagen;
- Erstatning for egne nødvendige Udgifter; samt
- Provision af  $1\frac{1}{3}$  pCt. af Vexelsummen.

Retten til at beregne Provision ophører, naar Provisionernes samlede Sum allerede er naaet op til 2 pCt. af Vexelsummen.

53. Regresfordringen kan inddrages ved en ny Vexel, trukken tilbage paa den, hos hvem Betalingen søges (Rekambio-vexel, Mod-vexel). Isaaftald kan der til Fordringens Beløb lægges Mæglergebyr for Modvexlens Salg samt Stempelafgift, forsaavidt saadan skal erlægges.

Saadan Vexel skal lyde paa Betaling ved Sigt og trækkes umiddelbart (a drittura).

54. Den, mod hvem Regresfordring fremsættes, er ikke forpligtet til at betale, medmindre Protesten og en kvitteret Regning over, hvad der betales (Retourregning), udleveres ham tilligemed Vexlen.

55. Enhver Endossent, som har fyldstgjort en af sine Eftermand, kan udstryke sit eget og efterfølgende Endossementer.

## Niende Kapitel.

### Om Vexlens Akcept eller Betaling efter Nødsadresse eller ved Intervention.

56. Er en Vexel, som er bleven protesteret for manglende eller ikke betryggende Akcept, forsynet med Anmodning til Nogen paa Betalingsstedet eller, hvis Forskriften i § 18 kommer til Anvendelse paa Vexlen, til Nogen paa Forevisningsstedet om i Nødsfald at akceptere den (Nødsadresse), skal der, for Regres paa Grund af saadan Protest kan gjøres gjældende, kræves Akcept hos den, til hvem saadan Anmodning er rettet (Nødsadressaten), og, ifald den nægtes, optages Protest ogsaa hos ham. Blandt flere Nødsadressater, som ere villige til at meddele Akcept, har den Fortrinnet, ved hvem de fleste Vexelskyldnere befries.

57. Bliver Vexlen ikke akcepteret af nogen af de i § 56 nævnte Nødsadressater, kan en Anden (Interventent), efterat Protest er optagen, akceptere Vexlen til Ære for Trassenten eller nogen af Endossenterne; dog er Vexeleieren ikke pligtig til at modtage saadan Akcept, medmindre den tilbydes af Trassaten. Tilbydes Akcept tillige af en Nødsadressat, ved hvem ligesaa mange Vexelskyldnere befries, har han Fortrinnet.

som i § 35 sagdt är; dock skall betalningen, i händelse kursen efter vexelns förfallodag fallit, erläggas efter den kurs, som då var gällande.

52. Har öfverlätare inlöst återgången vexel, ege han vid återgångskraf rätt att bekomma:

- hela det belopp, han jemlikt §§ 50 och 51 varit nödgad att betala, jemte ränta derå efter sex för hundra om året från betalningsdagen;
- ersättning för egna nödiga utgifter; samt
- provision till en tredjedel för hundra af vexelsumman.

Rätten att beräkna provision upphöre, när provisionernas sammanlagda belopp redan uppgått till två för hundra af vexelsumman.

53. Återgångsfordran må uttagas genom ny vexel, dragen tillbaka på den, hos hvilken betalningen äskas (recambio-vexel, återvexel). I ty fall må till fordrans belopp läggas mäklarearfvide för återvexelns försäljning samt stämpelafgift, så vidt sådan skall erläggas.

Sådan vexel skall lyda på betalning vid uppvisandet och dragas omedelbart (a drittura).

54. Den, mot hvilken återgångskraf framställes, vare ej pligtig betala, med mindre protesten och qvitterad räkning å hvad som betalas (returräkning) jemte vexeln till honom aflemnas,

55. Öfverlätare, som godtgjort någon af dem, som följa efter honom, ege utstryka sin egen och efterföljande öfverlåtelser.

## Nionde kapitlet.

### Om vexels godkännande eller betalning efter nödfallsadress eller till heder.

56. Är vexel, som blifvit protesterad för uteblifvet eller osäkert godkännande, försedd med anvisning till någon å betalningsorten, eller, om stadgandet i § 18 eger tillämpning å vexeln, till någon å uppvisningsorten att vexeln i nödfall godkänna (nödfallsadress); då skall, innan återgångstalan på grund af protesten må anställas, godkännande äskas hos den, å hvilken sådan anvisning lyder (nödfallsadressat), och, der detsamma vägras, protest hos honom verkställas. Äro nödfallsadresser gifna å flere, som äro villiga att meddela godkännande, hafve den företråde, genom hvilken de fleste vexelgäldenärer befrias.

57. Varder vexel ej godkänd af någon bland dem, på hvilka den är stäld, som i § 56 sägs, må annan man (interventent), sedan protest skett, godkänna vexeln till heder för vexelgifvaren eller någon af öfverlätarne; dock vare ej vexelinnehafvaren pligtig att sådant godkännande antaga, der det ej bjudes af den å hvilken vexeln dragen är. Bjudes godkännande jemväl af någon bland dem, på hvilka nödfallsadress lyder, och befrias genom honom lika många vexelgäldenärer, hafve han företråde.

if the rate of exchange has fallen since the day of maturity of the bill, shall be made according to the rate which then obtained.

52. If an indorser has in such manner paid a bill of exchange, his claim of recourse comprises:

The whole amount which according to §§ 50 and 51 he has been compelled to pay, together with 6 per cent. annual interest on this amount from the day of payment;

Reimbursement of his own necessary expenses; and

$\frac{1}{3}$  per cent. commission on the amount of the bill.

The right to claim commission ceases when the total amount of the commissions has already reached 2 per cent. on the amount of the bill.

53. The claim of recourse may be exercised by means of a new bill of exchange drawn on the person from whom payment is demanded (bill of re-exchange, re-draft). In such case there may be added to the amount of the claim the broker's commission for the sale of the re-draft and stamp duty if this is paid.

This bill shall be payable at sight and be drawn directly on the party liable (*a drittura*).

54. The person against whom the claim of recourse is advanced is under no obligation to pay unless the protest and a receipted account of that which is paid (re-draft account) is handed over to him together with the bill of exchange.

55. Any indorser who has satisfied one of his successors, may cross out his own and succeeding indorsements.

## Chapter IX.

### The acceptance or payment of bills of exchange by referees in case of need or by way of intervention (for honour).

56. If a bill of exchange which has been protested for non-acceptance or for insecurity of the acceptance, is provided with a request to any person at the place for payment, or, if the rule of § 18 applies to the bill, to any person at the place for presentment, asking him to accept the bill in case of need (reference in case of need), then, before recourse in virtue of such protest can be taken advantage of, acceptance shall be demanded of the person to whom such request is directed (the referee in case of need), and in case it is refused, protest shall be made also in respect of him. Amongst several referees in case of need who are willing to accept, that one has the preference by whom the greatest number of the parties to the bill would be discharged.

57. If the bill is not accepted by any of the referees in case of need mentioned in § 56, another person (intervener) may on protest having been made accept the bill for the honour of the drawer or any of the indorsers; the holder of the bill is not however under any obligation to receive such acceptance unless it is offered by the drawee. If acceptance is also offered by a referee in case of need by whom an equally large number of the parties liable on the bill would be discharged, he has the preference.

58. Akept af en Nodsadressat eller en Intervenant skal tegnes paa selve Vexlen; dog kan, hvor original Nodsadresse eller originalt Endossement findes paa en Kopi, Akcept efter Adressen eller til Ære for Endossenten tegnes paa Kopien. Hvis det ikke af Akepten eller af denne i Forbindelse med en Nodsadresse fremgaar, for hvis Regning den er given, skal den anses meddelt for Trasentens Regning.

59. Den, som akcepterer en Vexel som Nodsadressat eller Intervenant, er berettiget til mod Godtgjorelse af Protestomkostningerne at faa den for manglende eller ikke betryggende Akcept optagne Protest udleveret, forsynet med Paategning om hans egen Akcept og om Tiden, da den meddeltes. Senest den anden Sognedag efter Akceptdagen skal han med Posten eller, hvor Post ikke gaar, paa anden forsvarlig Maade oversende Protesten til den, for hvis Regning Vexlen blev akcepteret. Undlader han dette, svarer han til Skaden.

60. Den, som i Egenskab af Nodsadressat eller Intervenant har akcepteret en Vexel, svarer ligesom anden Akceptant for Vexlens Betaling til enhver af dens Eftermænd, for hvis Regning han har meddelt sin Akcept, saafremt Vexlen med forud optagen Protest forevises ham til Betaling inden den i § 62 fastsatte Frist.

61. Er en Vexel akcepteret af en Nodsadressat eller en Intervenant, have hverken Vexelejeren eller nogen anden af dens Eftermænd, for hvis Regning Vexlen er bleven akcepteret, Ret til Regres for manglende eller ikke betryggende Akcept. Derimod kan saadan Regres gjøres gjældende af den, for hvis Regning Akepten blev given, samt af dennes Formænd.

62. Er en for manglende Betaling protesteret Vexel forsynet med Nodsadresse, eller er Interventionsakcept tegnet paa Vexlen, og lyder Nodsadressen eller Akcepten paa Betalingsstedet, skal Vexlen tilligemed Protesten senest den anden Sognedag efter Forfaldsdagen forevises til Betaling, og, hvis saadan ej erholdes, protesteres hos samtlige Nodsadressater og Interventionsakceptanten. Forsømmes dette, taber Vexelejeren sin Regres mod enhver Vexelskyldner, som vilde være bleven befriet ved Betalingen. Det Samme gjælder, hvis Vexelejeren vægrer sig ved at modtage Betaling, der til Ære for nogen Vexelskyldner tilbydes ham.

63. Enhver, som i Egenskab af Nodsadressat eller Intervenant betaler Vexelsummen med Renter og erstatter de ved Protesten forvaldte Omkostninger, kan fordrø Vexlen og Protesten udleverede med Paategning om den skete Betaling og for hvem den er sket, samt indtræder i Vexelejerens Ret mod den, for hvis Regning han har betalt, mod dennes Formænd paa Vexlen og mod Akceptanten.

64. Tilbyde Flere sig at betale efter Protest, har den Fortrinet, ved hvem de fleste Vexelskyldnere befries. Den, som træder til med Betaling, uagtet det af Vexlen eller Pro-

58. Godkännande efter nödfallsadress eller till heder skall tecknas å sjelfva vexeln; dock må, derest å en afskrift deraf finnes nödfallsadress i original eller originalöfverlåtelse, godkännande efter adressen eller till heder för öfverlåtaren tecknas å afskriften. Der ej af godkännandet eller af detsamma i förbindelse med nödfallsadress synes, för hvars räkning det är gifvet, skall det anses meddeladt för vexelgifvarens räkning.

59. Den, som efter nödfallsadress eller till heder godkänner vexel, vare berättigad att mot ersättning för protestkostnaderna utbekomma protesten för utblifvet eller osäkert godkännande, försedd med påteckning om hans eget godkännande och om tiden, då det meddelades. Senast å andra söckendagen efter dagen för godkännandet skall han med posten eller, der post ej går, på annat ändamålsenligt sätt öfversända protesten till den, för hvars räkning vexeln blef godkänd. Underlåter han detta, svare till skadan.

60. Den, som efter nödfallsadress eller till heder godkänt vexel, svare såsom annan godkännare för vexelns betalning till hvarje öfverlåtare, som följer efter den, för hvars räkning han meddelat sitt godkännande, så framt vexeln med förut verkställd protest förevisas honom till betalning inom den i § 62 stadgade tid.

61. Har vexel blifvit godkänd efter nödfallsadress eller till heder, hafve hvarken vexelinnehafvaren, ej beller någon af de öfverlåtare, som följa efter den, för hvars räkning vexeln blef godkänd, rätt till återgångstalan för utblifvet eller osäkert godkännande. Deremot kan sådan talan göras gällande af den, för hvars räkning godkännandet gafs, och af de öfverlåtare, som föregå denne.

62. Är en för bristande betalning protesterad vexel försedd med nödfallsadress eller är godkännande till heder å vexeln tecknad, och lyder adressen eller godkännandet å betalningsorten, skall vexeln tillika med protesten sist å andra söckendagen efter förfalldagen till betalning uppvisas och, der sådan ej erhålles, protesteras hos alla dem, på hvilka nödfallsadresser lyda, och hos den, som lemnat godkännande till heder. Försummas detta, vare vexelinnehafvaren förlustig sin återgångstalan mot hvarje vexelgäldenär, som skulle blifvit befriad genom betalningen. Lag samma vare, derest vexelinnehafvaren vägrar mottaga betalning, som honom erbjudes till heder för någon vexelgäldenär.

63. Hvar, som efter nödfallsadress eller till heder betalar vexelsumman med ränta och ersätter de genom protesten vållade omkostnader, ege att utbekomma vexeln och protesten med påteckning om betalningen och för hvem den skett, samt inträde i vexelinnehafvarens rätt mot den, för hvars räkning han betalt, mot de öfverlåtare, som föregå denne, samt mot godkännaren.

64. Erbjuda sig flere att efter protest betala, hafve den företräde, genom hvilken de fleste vexelgäldenärer befrias. Den, som med betalning mellankommit, oaktadt af



58. Acceptance given by a referee in case of need or by an intervener for honour shall be written on the bill itself; where, however, an original reference in case of need or original indorsement is found on a copy, an acceptance in accordance with the reference or in honour of the indorser may be written on the copy. If the acceptance or the acceptance in conjunction with a reference in case of need does not indicate for whose account it has been given, it shall be considered as having been given for the account of the drawer.

59. A person who accepts a bill of exchange as a referee in case of need or intervener for honour is entitled on payment of the costs of protest to have the document of protest for non-acceptance or insecurity of acceptance handed over to him, and such protest shall be provided with a note mentioning his own acceptance and the time at which it was given. At the latest on the second business day after the day of acceptance, he shall by post, or, where no postal service is operating, in some other reliable manner, send the protest to the person for whose account he has accepted the bill. If he omits to do so, he is responsible for the damage.

60. The person who in his capacity of referee in case of need or intervener for honour has accepted a bill of exchange, is, like other acceptors, responsible for the payment of the bill towards each of the successors of the person for whose account he has given his acceptance, provided that the bill, with the protest previously made, is presented to him for payment within the period prescribed in § 62.

61. If a bill has been accepted by a referee in case of need or an intervener for honour, neither the holder of the bill nor any other of the successors of the person for whose account the bill has been accepted has a right of recourse for non-acceptance or insecurity of acceptance. On the other hand, such recourse may be exercised by the person for whose account the acceptance was given, and by the predecessors of this person.

62. If a bill of exchange protested for non-payment is provided with a reference in case of need, or an acceptance for honour is written on the bill, and if the reference or acceptance is given for the place of payment, the bill, together with the protest, at the latest on the second business day after the day of maturity shall be presented for payment, and if payment is not obtained, be protested at the residences of all the referees in case of need and at that of the acceptor for honour. If this is omitted, the holder of the bill loses his recourse against every party to the bill who would have been discharged by the payment. The same rule applies if the holder of the bill refuses to accept a payment which is offered to him for the honour of any party liable on the bill.

63. Any person who, in his capacity of referee in case of need or intervener for honour, pays the amount of the bill with interest and reimburses the costs incurred by the protest, may request that the bill and the protest be handed over to him with a note indicating that payment has been made and for whose account it has been made, and he is subrogated to the right of the holder of the bill as against the person for whose account he has paid, as against the predecessors of this person, and as against the acceptor.

64. If on protest several persons offer to pay, that one has the preference by whose payment the largest number of the parties liable on the bill will be discharged. A person who makes payment, although it results from the bill or the protest that

testen fremgaar, at en Anden, som havde tilbuddet Betaling, var nærmere berettiget til Vexlens Indløsning, har ingen Regres mod de Vexelskyldnere, som vilde være blevne befriede, hvis den Anden havde betalt.

65. Den Nødsadressat eller Interventent, som har akcepteret en Vexel, men som hindres i at betale derved, at en Anden indfrier Vexlen, er berettiget til af denne at erholde en Provision af  $\frac{1}{3}$  pCt.

## Tiende Kapitel.

### Om Vexelduplikater og Vexelkopier.

66. En Vexel kan udstedes i flere Exemplarer (Duplikater), af hvilke hvert enkelt i selve Texten skal betegne sin Orden som første, anden, tredje o. s. v. (prima, secunda, tertia o. s. v.), men som forøvrigt ere enslydende. Ere Exemplarerne ikke saaledes betegnede, gjælder ethvert af dem som en selvstændig, i et Exemplar udstedt Vexel (Solavexel).

67. Saavel Vexeltageren som senere Vexeleiere ere mod Godtgjorelse af Omkostningerne berettigede til af Trassenten at fordr Duplikater af Vexlen<sup>1)</sup>. En senere Vexeleier kan tillige henvende sig med saadan Begjæring til sin umiddelbare Formand, denne igjen til sin Formand og saa fremdeles, indtil Begjæringen naaer Trassenten. Paa Duplikaterne ere Endossenterne pligtige til efter Rækkefølgen at gjentage Endossementerne<sup>2)</sup>.

68. Indfries et Exemplar af Vexlen, ere de øvrige uden Kraft. Dog svarer Akceptanten fremdeles for ethvert efter Indfrielsen løbende Exemplar, som findes forsynet med hans Akcept<sup>3)</sup>. Ligeledes svarer den Endossent, som til forskjellige Personer har endosseret Vexel-exemplarer, samt senere Endossenter af disse for ethvert efter Indfrielsen løbende Exemplar, paa hvilket deres Endossement findes tegnet.

69. Er et Exemplar af Vexlen sendt til Akcept, skal der, naar et andet Exemplar endosseres, bemærkes paa dette, hos hvem det til Akcept sendte Exemplar findes. Den, som har dette i Forvaring, er pligtig at udlevere det til den, der i Medfør af § 39 eller paa anden Maade godtgjør sin Ret til Udlevering.

70. Innehaveren af et Vexelduplikat, paa hvilket det er bemærket, hos hvem det til Akcept afsendt Exemplar findes, er ikke berettiget til at søge Regres for manglende Akcept eller for manglende Betaling, forinden han ved Protest har godtgjort, at han ikke har kunnet faa det nævnte Exemplar udleveret, og at han ikke heller har kunnet faa Akcept paa eller Betaling efter Duplikatet.

vexeln eller protesten framgick, att annan, som erbjudit betalning, var närmare berättigad till vexelns inlösande, hafve icke återgångstalan mot de vexelgäldenärer, som skulle blifvit befriade, om den andre betalt.

65. Den, som efter nödfallsadress eller till heder godkänt vexel, men från betalning hindras deraf, att annan infriar vexeln, vare berättigad att af denne erhålla provision till en tredjedel för hundra.

## Tionde kapitlet.

### Om duplett och afskrift af vexel.

66. Vexel må utgifvas i flera exemplar (dupletter), af hvilka hvarje särskildt exemplar skall i sjelfva texten utmärka sin ordning, såsom första, andra, tredje o. s. v. (prima, secunda, tertia o. s. v.), men som för öfrigt skola vara lika lydande. Äro exemplaren icke sålunda betecknade, gälle hvarje af dem såsom sjelfständigt, i ett exemplar utgifven vexel (solavexel).

67. Såväl vexeltagaren som senare innehafvare af vexeln vare berättigade att af vexelgifvaren, mot ersättning för kostnaderna, erhålla dupletter af vexeln<sup>1)</sup>. Senare vexel-innehafvare ege jemväl vända sig med begäran derom till den, som vexeln till honom öfverlätit, denne till sin man och så vidare, till dess begäran hinner vexelgifvaren. Öfverlätare vare pligtige att på duplette-exemplar förnya öfverlåtelserna efter deras ordningsföljd<sup>2)</sup>.

68. Infrias ett vexelexemplar, vare de öfriga kraftlösa. Dock svare godkännare fortfarande för hvarje efter infriandet utelöpande exemplar, som finnes försedt med hans godkännande<sup>3)</sup>. Likaledes svare öfverlätare, som till olika personer öfverlätit vexelexemplar, äfvensom senare öfverlätare af dessa, för hvarje efter infriandet utelöpande exemplar, hvarä deras öfverlåtelse finnes tecknad.

69. Är ett exemplar af vexeln till godkännande afsändt, då skall, när annat exemplar öfverlåtes, å detta tecknas, hos hvem det till godkännande afsända exemplaret finnes. Den, som har detsamma i förvar, vare pligtig att utlemna det till den, som jemlikt § 39 eller på annat sätt visar sin rätt att det utfå.

70. Innehafvare af vexelduplett, hvarä antecknad är, hos hvem det till godkännande afsända exemplaret finnes, vare icke berättigad att anställa återgångstalan för utblifvet godkännande eller för bristande betalning, innan han genom protest ådagalagt, att han icke kunnat utfå nämnda exemplar och att han ej heller å dupletten kunnat få godkännande eller betalning.

<sup>1)</sup> Har Vexelejeren först modtaget en Vexel uden Ordensbetegnelse, kan han — bortset fra Reglen i § 74 — kun fordr Duplikater mod dens Tilbagegivelse. — <sup>2)</sup> Derimod kan Akcept ikke fordreres tegnet paa mere end et Exemplar. — <sup>3)</sup> Akceptanten behøver derfor ikke at betale, forinden han erholder sin Akcept tilbage og kan Vexelejeren ej bringe det akcepterede Exemplar tilstede, kan han altsaa heller ingen Betaling fordrer af Akceptanten. Derimod maa han tiltræde Regres efter § 70, hvis Bemærkning efter § 69, 1 Pk. findes paa Vexlen, og, hvis saadan Bemærkning ikke findes paa Vexlen, uden videre rejse Regreskrav efter almindelige Regler.

some other person who had offered payment was preferably entitled to pay the bill in question, has no recourse against those parties to the bill who would have been discharged if the latter had made the payment.

**65.** A referee in case of need or intervener for honour who has accepted a bill, but who is prevented from paying owing to the circumstance that some other person pays the bill, is entitled to obtain from the latter a commission of  $\frac{1}{3}$  per cent.

## Chapter X.

### Duplicates and copies of bills of exchange.

**66.** A bill of exchange may be issued in several copies (duplicates), of which each one shall, in the text itself, designate its order as first, second, third etc. (*prima, secunda, tertia* etc.), but which in all other respects shall be identical. If the copies are not designated in this manner, each of them is treated as an independent bill issued in one copy only (single bill).

**67.** The taker of a bill, as well as subsequent holders thereof, are entitled subject to reimbursement of the costs incurred to demand duplicates of the bill<sup>1)</sup> from the drawer. A subsequent holder of the bill may also make such demand on his immediate predecessor, who again may make the same demand on his predecessor, and so on, until the demand reaches the drawer. The indorsers are bound to repeat the indorsements<sup>2)</sup> in their right order on the duplicates.

**68.** If one duplicate of a bill is paid, the others are null and void. The acceptor is, however, still liable in respect of each duplicate circulating after payment which is found provided with his acceptance<sup>3)</sup>. Similarly, an indorser who has indorsed duplicates of a bill to several persons, and subsequent indorsers of the latter, are liable in respect of each duplicate circulating after payment on which their indorsements are written.

**69.** If one duplicate of a bill has been sent for acceptance, there shall, when another duplicate is indorsed, be noted on the latter with whom the copy which has been sent for acceptance is to be found. The person who keeps this copy is bound to hand it over to the person who, in accordance with § 39 or in some other manner, proves his right to have it handed over to him.

**70.** The holder of a duplicate of a bill on which it has been written with whom the copy sent for acceptance is to be found, has no right of recourse for non-acceptance or non-payment until he has proved by means of protest that he has not been able to obtain possession of the said copy, and also that he has been unable to obtain acceptance of or payment according to the duplicate.

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<sup>1)</sup> If the holder of a bill has at first received a bill without an indication of its order, he may — apart from the rule indicated in § 74 — only demand duplicates on giving up the bill. — <sup>2)</sup> On the other hand, acceptance must not be asked for on more than one copy. — <sup>3)</sup> The acceptor, therefore, need not pay until he has his acceptance given up to him, and if the holder of the bill cannot restore the accepted copy, he consequently cannot demand any payment from the acceptor. On the other hand, he must exercise his right of recourse according to § 70 if a note according to § 69, 1st sentence, is to be found on the bill, and if such a note is not to be found on the bill, must forthwith exercise his claim of recourse according to the ordinary rules.

71. Tages der Kopi<sup>1)</sup> af en Vexel i den Hensigt at tegne Endossement paa den, skal Kopien ogsaa indeholde Afskrift af de allerede paa Vexlen værende Endossementer og øvrige Paategninger. Kopien skal forsynes med Bemærkning om, hvor langt Afskriften gaar, eller hvor de originale Endossementer begynde, samt hos hvem Originalvexlen findes<sup>2)</sup>.

72. Den, som har Originalvexlen i Forvaring, er pligtig at udlevere den til den, der i Medfør af § 39 eller paa anden Maade godtgjør sin Ret til Udlevering. Ihænde-haveren af Vexelkopien er, naar han ikke kan faa Originalvexlen udleveret, berettiget til efter Protest for nægtet Udlevering at søge Regres hos de Endossenter, hvis originale Endossementer findes paa Kopien.

### Ellevte Kapitel.

#### Om bortkomne Vexler.

73. Er en Vexel bortkommen, kan den blive mortificeret overensstemmende med de om Mortifikation ellers givne Regler<sup>3)</sup>.

74. Naar Stævning i Mortifikations-sagen er lovlig kundgjort, er Trassenten forpligtet til at udstede nyt Vexelbrev. Var den bortkomne Vexel akcepteret, er Akceptanten, naar Forfaldstid er kommen, pligtig til at betale til den, som godtgjør sin Ret til at oppebære Betalingen. Dog skal der i disse Tilfælde stilles Trassenten eller Akceptanten antagelig Sikkerhed, indtil Vexlen er bleven mortificeret eller deres Ansvar efter den bortkomne Vexel paa anden Maade er ophørt.

75. Er Vexelretten afhængig af, at Vexlen inden en vis Tid bliver forevist eller protesteret, kan den, for hvem Vexlen er bortkommen, bevare den ham i § 74 mod Trassen-

71. Tages afskrift<sup>1)</sup> af vexel i afsigt att derå teckna öfverlåtelse, då skall afskriften innefatta äfven de å vexeln redan befintliga öfverlåtelser och öfriga påteekningar. Afskriften skall förses med anmärkning, huru långt den är afskrift eller hvar originalöfverlåtelserna vidtaga samt hos hvem originalvexeln finnes<sup>2)</sup>.

72. Hvar, som har originalvexeln i förvar, vare pligtig att densamma aflemna til, den, som jemlikt § 39 eller på annat sätt visar sin rätt att den utfå. Innehafvare af en afskrift af vexeln vare, när han icke kan utfå originalvexeln, berättigad att, efter protest för vägradt utlemnande, anställa återgångstalan mot de öfverlåtare, hvilkas originalöfverlåtelser finnas på afskriften.

### Elfte kapitlet.

#### Om förkommen vexel.

73. Har vexel förkommit, må den kunna dödas på sätt derom särskildt stadgas<sup>4)</sup>.

74. När stämning i sådant mål blifvit i stadgad ordning kungjord, vare vexelgifvaren pligtig att utställa nytt vexelbref. Var den förkomna vexeln godkänd, äligge det godkännaren att, när förfallotid är inne, betala till den, som visar sin rätt att betalningen uppbära. Åt vexelgifvaren eller godkännaren skall i ty fall ställas antaglig säkerhet till dess vexeln blifvit dödad eller hvarderas ansvarighet för den förkomna vexeln eljest upphört.

75. Är vexelrätten beroende deraf, att vexel inom viss tid varder upprävisad eller protesterad, kan den, för hvilken vexeln förkommit, bevare den rätt mot vexelgifvare och

<sup>1)</sup> Medens en Kopi kan bruges til Endossement (jvf. § 11), Avaltegnung og Nods-adresse, kan den ikke benyttes til Akcept af Trassatus, se § 21, 2St., jvf. derimod § 58. —

<sup>2)</sup> Hvis denne Bemærkning mangler, og Kopiens Ihænde-haver ikke kan faa konstateret, hos hvem Originalvexlen findes, henstaar det som tvivlsomt, om Kopiens Ihænde-haver i saa Fald er udelukket fra al Regres, fordi han har været saa uforsigtig at nøjes med en Kopi uden den omtalte Bemærkning, eller om Kopiens Original-Endossenter som Følge af, at de have givet Kopien fra sig uden Bemærkningen, maa finde sig i Regres efter sædvanlig Vexelomgang d. v. s. Protest i Henhold til Kopien hos Trassatus. — <sup>3)</sup> Dette vil for dansk Rets Vedkommende sige: overensstemmende med Reglerne i Fdg. 7 Febr. 1823. Saavel uaccepterede som accepterede Vexler kunne mortificeres, og at Vexlen, da den bortkom, var endosseret in blanco, hindrer ikke Mortifikation. Mortifikationsdommens Virkning er den sædvanlige, nemlig at Mortifikanten er legitimeret som Vexelejer. Han kan folgelig tvinge Akceptanten til Indfrielse, forudsat at han i Benægtelsestilfælde kan bevise Akcepten. I Norge har man om Mortifikation af negotiable Dokumenter i det Hele — og derunder tillige Vexler — Loven af 6 Marts 1869, hvis § 2 bestemmer, at det ved kongelig Bevilling (som i en Aarrække og fremdeles *ad mandatum* gives af Lustitsdepartementet) kan tillades at søge saadanne Dokumenter, naar de er forkomne, ved Dom kjendt døde og magtesløse efter en almindelig, til den mulige Ihænde-haver eller Rettighedshaver stilet Stevning. Sagen anlægges ved Sagsøgerens Værneting. Varslet er ifølge Lovens § 7 tre Maaneder, og inden denne Frist skal den ovennævnte Ediktalstevning have været indrykket i den almindelige Kundgjørelsestidende (Lov af 19 Juni 1882) samt thinglyst inden den Thingkreds, hvor Sagen bliver at unhangiggjøre; paa Landet skal den derhos opslaaes og læses fra Kirkebækken i det Sogn, hvor Sagsøgerne bor. Om Gjenstand for Vexelmortifikation og Mortifikationsdommens Virkning gjelder for norsk Rets Vedkommende det samme som om den danske Ret ovenfor anført. — <sup>4)</sup> For svensk Rets Vedk. se Indførselslovens § 3.

71. If a copy<sup>1)</sup> of a bill is made with the object of writing indorsements on it, the copy shall also reproduce the indorsements which are already to be found, and the other remarks, written on the original bill. The copy shall be provided with a note indicating how far back the copy goes, or where the original indorsements commence, and also with whom the original bill is to be found<sup>2)</sup>.

72. The person with whom the original copy is deposited is bound to hand it over to the person who, in accordance with § 39 or in some other manner, proves his right to have it handed over to him. The holder of a copy of the bill, when he cannot obtain the original, is entitled, on protest for refusal of delivery, to have recourse against those indorsers whose original indorsements are to be found on the copy.

## Chapter XI.

### Lost bills of exchange.

73. If a bill of exchange has been lost, it may be annulled according to the special regulations for annulment<sup>3)</sup><sup>4)</sup>.

74. When a summons with a view to annulment has been lawfully issued, the drawer is bound to issue a fresh bill of exchange. If the lost bill had been accepted, the acceptor when the day for payment has come is bound to make payment to the person who proves his right to obtain payment. In these cases, however, the drawer or acceptor shall be given sufficient security until the bill has been annulled, or their liability according to the lost bill has ceased in some other manner.

75. If the right according to the law of bills is dependent on the condition that the bill in question shall be presented or protested within a certain time, the person who has lost the bill may maintain the right given to him against the drawer and

<sup>1)</sup> Whereas a copy may be used for indorsements (compare § 11), guarantees (*aval*) and references in case of need, it must not be used for acceptance by the drawee; see § 21, 2nd paragraph; compare on the other hand § 58. — <sup>2)</sup> If this remark has been omitted, and the holder of the copy cannot substantiate with whom the original bill is to be found, it is doubtful whether the holder of the copy in such case is excluded from all recourse, because he has been incautious enough to be contented with a copy without the aforesaid remark, or whether the original indorsers of the copy, as a consequence of the circumstance that they have transferred the copy without the remark in question, must be satisfied with recourse according to the ordinary procedure of bills of exchange, i. e. to make protest in accordance with the copy in the hands of the drawee. — <sup>3)</sup> This as far as *Danish* law is concerned means: in accordance with the rules given in the Ordinance of 7 Feb. 1823. Both non-accepted and accepted bills may be annulled, and the circumstance that the bill when it was lost was indorsed in blank does not prevent annulment. The effect of the judgment of annulment is the usual one, i. e. that the person who brings about the annulment obtains a proof of his right of ownership of the bill in question. He may consequently compel the acceptor to make payment, provided that in the case of a refusal he is able to prove the acceptance. In *Norway* in regard to the annulment of negotiable securities in general — and amongst these also in regard to bills of exchange — the Act of 6 March 1869 applies, of which § 2 provides that by means of royal authorization (which during a series of years has been and is still given by means of a *mandatum* of the Ministry of Justice) it may be permitted, when such documents have been lost, to endeavour to have them declared null and void by a judgment after an ordinary summons has been issued addressed to the possible holder or person who has the right of ownership. The action is brought before the tribunal of the jurisdiction of the plaintiff. The notice given, according to § 7 of the Act, is one of three months' duration, and within this period the aforesaid edictal summons must be published in the ordinary Gazette for Publications (Act of 19 June 1882) and proclaimed in public within the jurisdiction in which the action is to be brought; in the rural districts the summons must also be placarded and read before the church of the parish in which the plaintiff is resident. With regard to the object of the annulment of bills of exchange and the effect of judgments of annulment, the same rules apply in Norwegian law as in Danish law as indicated above. — <sup>4)</sup> As regards *Swedish* law see § 3 of the Act of Introduction.

ten og Akeptanten givne Ret ved inden Protestfristens Udlob at optage Protest i Anledning af Vexlens Tab. Om saadan Protest skal Underretning gives de nævnte Vexelskyldnere paa den Maade og under det Ansvar, som i §§ 45—47 er fastsat.

76. Den, der har en Vexel i Hænde med saadan Adkomst, som § 39 nævner, er ikke pligtig at udlevere den til den, fra hvem den er bortkommen, medmindre det godtgøres, at han ved Erhvervelsen ikke har været i god Tro eller har handlet med grov Uagtsomhed.

## Tolvte Kapitel.

### Om Vexlers Præskription.

77. Vexelfordringen mod en Akeptant præskriberes i et Tidsrum af tre Aar, regnede fra Vexlens Forfaldsdag. Er Vexlen betalbar ved Sigt, regnes Tiden fra Udlobet af den i § 32 fastsatte Frist eller, hvis Vexlen tidligere har været forevist til Betaling, fra Forevisningsdagen.

78. Den Regresfordring, der ifølge § 29 eller § 50 tilkommer en Vexelejer, præskriberes i Forhold til Trassenten og Endossenterne i seks Maaneder fra Forfaldsdagen, saafremt Vexlen er betalbar noget Sted i Europa med Undtagelse af Island og Færoerne, og i et Aar fra den nævnte Dag, saafremt Vexlen er betalbar paa sidstnævnte Steder eller noget Sted udenfor Europa.

79. Den Regresfordring, der tilkommer en Endossent, som har indfriet en Vexel, præskriberes i Forhold til Trassenten og foregaaende Endossenter i seks Maaneder, hvis den Endossent, der har indfriet Vexlen, boer i Europa med Undtagelse af Island og Færoerne, og i et Aar, hvis han boer paa sidstnævnte Steder eller noget Sted udenfor Europa; og skal Tiden regnes fra Betalingsdagen, saafremt han uden Rettergang har indfriet Vexlen, men ellers fra den Dag, da Stævning i Vexelsogsmaalet blev forkyndt for ham, eller Vexelfordringen blev anmeldt i hans under offentlig Behandling staaende Bo.

80. Vexelpreskriptionen afbrydes ved Forkyndelse af Stævning eller ved Vexelfordringens Anmeldelse i Skyldnerens under offentlig Behandling staaende Bo, *saa og derved, at den, mod hvem saadant Sogsmaal er reist, indvæbser en Formand for Processens Skyld (litis denunciatio)*<sup>1)</sup> Den, som har

*ad § 78.* Reglen passer ikke paa Efter-Endossement (d. v. s. Endossement af en alt forfalden Vexel). I Tilfælde af et saadant, maa Præskriptionsfristen vistnok regnes fra Endossementets Datum.

*ad § 79.* Bestemmelsen i denne § kan medføre, at en Endossents og Trassentens Forpligtelse kan forblive uforældet, efter at Akeptforpligtelsen efter § 77 er præskriberet, uden at det — jfv. § 80 — har staaet i den Paagældendes Magt at afværge dette Resultat. Det er derfor et Spørgsmaal, om ikke Vexelejeren taber sit Krav mod samtlige Vexelskyldnere ved at lade Akeptantens Forpligtelse forældes. Spørgsmaalet er omstridt i Teorien og ses ikke at være afgjort ved nogen Dom.

*ad § 80.* 1) Den svenske Vexellov har, som det vil ses, ikke optaget denne Adgang til at afbryde Præskriptionen gennem *litis denunciatio*, idet den svenske Procees ikke kender en særskilt Form for *litis denunciatio*. Den herved fremkomne Forskel er dog ikke af væsentlig Betydning, da der efter svensk Ret Intet er til Hinder for, at den, der selv er stævnet i en Gælds-

godkännare, hvarom i § 74 sägs, genom att före protesttidens utgång protestera i anledning af vexelns förlust. Om sådan protest skall underrättelse gifvas till nämnde vexelgäldenärer på sätt och vid påföljd, som i §§ 45—47 sägs.

76. Den, som med sådan åtkomst, som i § 39 omförmäles, har vexel i händer, vare, der ej visas, att han vid vexelns förvärfvande icke varit i god tro eller att han dervid förfarit med grof vårdslöshet, icke pligtig att utlemna vexeln till den, för hvilken densamma förkommit.

## Tolfte kapitlet.

### Om vexels preskription.

77. Vexelfordran mot godkännare vare preskriberad efter en tidrymd af tre år, räknade från vexelns förfallodag. Är vexel betalbar vid uppvisandet, räknas tiden från utgången af den i § 32 stadgade tid eller, om vexeln tidigare blifvit till betalning uppvisad, från den dag uppvisandet skedde.

78. Återgångsfordran, som jemlikt § 29 eller § 50 tillkommer vexelinnehafvare, vare i förhållande till vexelgifvaren och öfverlåtare preskriberad sex månader efter förfallodagen, om vexeln var betalbar å någon ort i Europa med undantag af Island och Färöarne, samt ett år efter nämnda dag, om vexeln var betalbar på sistnämnda orter eller någon ort utom Europa.

79. Återgångsfordran, som tillkommer öfverlåtare, hvilken vexel infriat, preskriberas i förhållande till vexelgifvaren och föregående öfverlåtare, efter sex månader om öfverlåtaren, som vexeln infriat, bor i Europa med undantag af Island och Färöarne, och efter ett år, om han bor på sistnämnda orter eller någon ort utom Europa; och skall tiden räknas från betalningsdagen, derest han utan rättgång infriat vexeln, men i annat fall från den dag, då stämning i vexelmålet blef honom delgifven eller vexelfordringen i hans till konkurs afträdde bo bevakad.

80. Vexelpreskription afbrytes genom stämnings delgifvande eller vexelfordringens bevakning i gäldenärs till konkurs afträdde bo.

acceptor according to § 74, by making protest on account of the loss of the bill before the expiration of the period for protest. The said parties liable on the bill shall be notified of such protest in the manner and under the responsibility which are prescribed in §§ 45—47.

76. A person who has come into the possession of a bill of exchange in conformity with § 39 is not bound to hand it over to the person who has lost it, unless it is proved that in acquiring it he did not act in good faith or acted with gross carelessness.

## Chapter XII.

### The prescription of bills of exchange.

77. The claim on a bill of exchange against the acceptor is prescribed in a period of three years reckoned from the day of maturity of the bill in question. If the bill is payable at sight, this period is reckoned from the expiration of the period fixed in § 32, or if the bill has previously been presented for payment, from the day of presentment.

78. The claim of recourse which according to § 29 or § 50 belongs to the holder of a bill, is prescribed in respect of the drawer and the indorsers in six months from the day of maturity, if the bill is payable at any place in Europe with the exception of Iceland and the Faröe Islands, and in one year from the said day if the bill is payable in one of the two last-mentioned Islands or at any place outside Europe.

79. A claim of recourse which belongs to an indorser who has paid a bill, is prescribed in respect of the drawer and previous indorsers in six months, if the indorser who has paid the bill lives in Europe, with the exception of Iceland and the Faröe Islands, and in a year if he lives in one of the two last-mentioned Islands or at any place outside Europe; and the time shall be reckoned from the day of maturity if he has paid the bill without any lawsuit, and otherwise from the day on which the summons in the bill of exchange action was delivered to him, or notice of the claim on the bill was given in bankruptcy proceedings in respect of his estate.

(Danish-Norwegian text.)

(Swedish text.)

80. The prescription of a bill of exchange is interrupted by the issue of a summons or by giving notice of the claim on the bill to the bankruptcy estate of the debtor, *and also by the circumstance that the person against whom the action has been brought summons a predecessor by reason of the process (litis denunciatio)*<sup>1)</sup>.

80. The prescription of a bill is interrupted by the issue of a summons or by giving notice of the claim of the bill to the estate of the debtor administered in bankruptcy.

To § 78. The rule does not apply to an after-indorsement (i. e. an indorsement of a bill which is already due for payment). In the event of such an indorsement existing the period of prescription must no doubt be reckoned from the date of the indorsement.

To § 79. The rule contained in this Article may bring about the circumstance that the liability of an indorser and the drawer may remain non-prescribed when the obligation of the acceptor has been prescribed in accordance with § 77 without it having been in the power (compare § 80) of the interested person to prevent this result. It is therefore a question whether the holder of the bill does not lose his claim against all the persons liable on the bill by allowing the obligation of the acceptor to become prescribed. The question is controversial in theory and does not seem to have been decided by any judgment.

To § 80. 1) The Swedish Bills of Exchange Act has not, as is seen, adopted this possibility of interrupting the prescription, because the Swedish procedure does not recognize a special form of *litis denunciatio*. The difference resulting from this circumstance is, however, not of any considerable importance, as according to Swedish law there is nothing which prevents the

*modtaget saadan Indvarsling, kan afbryde den i § 77 omhandlede Præskription ved ligeledes at give Akseptanten Procesvarsel.*

Præskriptionen afbrydes ikke i Forhold til andre Vexelskyldnere end den, mod hvem nogen af de ovennævnte Handlinger rettes; men Afbrydelsen virker til Fordel for alle dens Formænd, der har foretaget Afbrydelsen.

Har Afbrydelse af Præskription fundet Sted, uden at Vexelsøgsmålet bringes til Afslutning, begynder en ny Præskriptionsfrist at løbe fra den Dag, da Sagen sidst foretoges i Retten<sup>1)</sup>.

### Trettende Kapitel.

#### Om Foretagelse af Protest.

81. Protest skal foretages af Notarius publicus eller af en anden dertil i Lovgivningen bemyndiget Person, og bliver den at indføre i en Protokoll.

82. Protesten skal indeholde: Afskrift af Vexlen eller Vexelkopien med Alt, hvad derpaa findes tegnet, Rekvisitens Begjæring eller Paastand, det Svar, der gives af den, hos hvem der protesteres, eller Bemærkning om, at intet Svar har været at erholde, eller at han ikke har kunnet træffes, Angivelse af Stedet hvor og Tiden naar Protesten sker, og endelig Underskrift af den, som foretager Protest-handlingen.

Om den optagne Protest skal der gjøres Bemærkning paa Vexlen eller Vexelkopien.

83. Begjæres Vexelprotest hos flere Personer paa samme Sted, udfordres kun en Protestforretning.

### Fjortende Kapitel.

#### Om Forholdet til udenlandsk Lov.

84. En Udlandings<sup>2)</sup> Evne til at indgaa Vexelforpligtelser bedømmes efter hans

sag, paa sædvanlig Maade stævner en Tredjemand til at modtage Dom for det Tilfælde, at han selv bliver fældet i den første Sag. — *Litis denunciatio* kan foretages, saalænge den paagældende Retsforfølgning staar paa, og dens afbrydende Virkning gælder, saalænge Retsforfølgningen varer.

<sup>1)</sup> Er derimod Vexelforpligtelsen blevet anerkendt ved Dom, er Kravet tillige et Domskrav, som kun foreldes i Overensstemmelse med de almindelige Forældelsesregler.

*ad § 80 i øvrigt.* Efter Indholdet af § en afbryder extrajudicielt Paaskrav og Anerkendelse fra Skyldnerens Side ikke Præskriptionen, men den direkte Anerkendelse af Vexelforpligtelsen som almindelig civilretlig Forpligtelse giver Forpligtelsen et nyt Grundlag, som foreldes efter almindelige Præskriptionsregler.

*ad § 81.* Uvæsentlige Fejl gøre ikke Protesten ugyldig.

*ad §§ 81—83.* Idet Loven saaledes kun indeholder enkelte Regler om Protest, forudsætter den stiltiende, at der af andre Love gives udfyldende Bestemmelser derom; navnlig er dette Tilfældet med den paa Grund af §§ 25, 26 og 30 vigtige Regel om, hvem der kan begære Udskrift af Protest, noget, som man opgav at ordne paa en overensstemmende Maade i Vexellovene. Forholdet er det, at i Danmark og Norge kan kun Protestrekvisenten faae saadan Udskrift; i Sverige kan den derimod for den lovbestemte Betaling faas af Enhver. Jvf. i øvrigt om Protest, dansk Lov 28 Maj 1880 § 10 (ndf. S. 33), norsk Lov 17 Juni 1880, § 10 (ndf. S. 35) og svensk Indførelseslov § 4 (ndf. S. 30), jvf. K. Cirkulære af 24 Sept. 1886.

<sup>2)</sup> „Udlænding“ d. v. s. en Person, som har sit Hjem (faste Opholdssted) udenfor henholdsvis Danmark, Norge eller Sverige, hvorved særlig bemærkes, at en i Danmark Bosiddende er Udlænding i Forhold til norsk og svensk Vexellov, en i Norge Bosiddende Udlænding

Præskription afbrytes ikke i förhållande till annan vexelgäldenär, än den, mot hvilken någon af nämnda åtgärder vidtagits, men dess afbrytande gälle till fördel för alla vexelgäldenärer, hvilka föregå den, som åtgärden vidtagit.

Har afbrott af preskription egt rum, utan att vexelmålet föres till slut, skall ny prescriptionstid begynna att löpa från den dag, målet sist af Rätten handlades<sup>1)</sup>.

### Trettonde kapitlet.

#### Om verkställighet af protest.

81. Protest skall verkställas af notarius publicus eller annan dertill i lag bemyndigad person; och skall deröfver protokoll föras.

82. Den öfver protesten upprättade handling skall innehålla: afskrift af vexeln eller vexelkopian med allt hvad derå finnes teeknadt; den sökandes begäran eller påstående; det svar, som gives af den mot hvilken protesteras, eller anmärkning, att svar ej kunnat erhållas eller att han ej kunnat träffas; uppgift på orten hvarst och tiden, när protesten sker, samt slutligen underskrift af den, som protesten verkställer.

Om verkställd protest skall anteckning göras å vexeln eller afskriften deraf.

83. Begäres vexelprotest mot flere personer på samma ort, må endast ett protokoll deröfver upprättas.

### Fjortonde kapitlet.

#### Om förhållandet till utländsk lag.

84. Utländings<sup>2)</sup> rätt att ingå vexelförbindelse varde pröfvad efter hans eget



*The person who has received such summons may also interrupt the prescription dealt with in § 77 by issuing a notice of process to the acceptor.*

The prescription is not interrupted in respect of persons liable on the bill other than those in regard to whom any of the above-mentioned proceedings have been applied; but the interruption operates in favour of all the predecessors of the person who has brought about the interruption.

If interruption of prescription has taken place without the bill of exchange action being brought to a close, a new period of prescription begins to run from the day on which the cause was last taken in court<sup>1</sup>).

### Chapter XIII.

#### Protest.

81. Protest shall be made by a public notary or by some other person authorized by law, and shall be put on record.

82. A protest shall contain: a transcript of the bill or of the copy of the bill in question with everything written on it, the request or claim of the person protesting, the answer which has been given by the person against whom the protest is directed, or a note of the circumstance that no answer has been obtained, or that he has not been found, an indication of the place at which and the time when the protest is made, and finally the signature of the person who makes the protest.

On the bill or copy of the bill it shall be stated that protest has been made.

83. If it is requested that the protest of the bill shall be made against several persons resident at the same place, only one act of protest is needed.

### Chapter XIV.

#### The relation to foreign laws (conflict of laws).

84. The capacity of a foreigner<sup>2</sup>) to contract liabilities on bills of exchange is governed by the laws of his own country. If, however, he contracts such a liability

person who has himself been cited in an action of debt, from summoning a third person in the usual way to receive judgment in case he himself has sentence passed against him in the first action. — The *litis denunciatio* may be brought into operation so long as the action in question is pending, and its interrupting effect is valid so long as the legal action remains undecided.

<sup>1</sup>) If on the other hand the liability on the bill has been recognized by a judgment, the claim is also a claim based on a judgment which can only be prescribed in accordance with the general rules of prescription.

*To other points of § 80.* According to the tenor of the Article, an extra-judicial demand and a recognition on the part of the debtor do not interrupt the prescription, but the direct recognition of the liability on the bill as an ordinary liability in accordance with the Civil Code gives the liability a new basis, and this new liability is prescribed according to the ordinary rules of prescription.

*To § 81.* Unessential errors do not make a protest invalid.

*To §§ 81—83.* As the Act only contains particular rules in regard to protest, it tacitly implies that other laws provide supplementary rules on the subject; this is in particular the case in regard to the important rule based on §§ 25, 26 and 30 as to who may demand a transcript of a protest, something which it was omitted to regulate in a uniform manner in the Bills of Exchange Act. The position is that in Denmark and Norway only the person who requests the protest may obtain such a transcript; in Sweden, on the other hand, it may be obtained by anybody who pays the charge fixed by law. Compare also in regard to protest the Danish Act of 28 May 1880 § 10 (below p. 33), the Norwegian Act of 17 June 1880, § 10 (below p. 35) and the Swedish Act of Introduction § 4 (below p. 30); cf. the Royal Circular of 24 Sept. 1886.

<sup>2</sup>) "Foreigner" i. e. a person who has his home (fixed domicile) outside Denmark, Norway or Sweden respectively. It must be noted in particular in this respect that a person resident in Denmark is a foreigner in regard to the Norwegian and Swedish Bills of Exchange Acts,

eget Lands Lov. Er han efter denne uberettiget dertil, og paatager han sig saadan Forpligtelse her i Riget<sup>1)</sup>, bliver han dog ansvarlig for den, forsaavidt han efter den her gjældende Ret kan indgaa Vexelforpligtelser<sup>2)</sup>.

85. Gyldigheden af en Vexelforpligtelses Form bedømmes efter Loven paa det Sted, hvor Forpligtelsen er indgaaet. Fyldestgjøre imidlertid de i Udlandet indgaaede Vexelforpligtelser nærværende Løvs Fordringer, ere de Erklæringer, som senere her i Riget paategnes Vexlen, gyldige, uanset at de i Udlandet indgaaede Forpligtelser vare mangelfulde efter den udenlandske Lov. Ligeledes have Vexelforpligtelser, som en Indlænding i Udlandet paatager sig overfor dansk, norsk eller svensk Mand, Gyldighed, saafremt de fyldestgjøre nærværende Løvs Forskrifter.

86. Med Hensyn til Fremgangsmaaden ved de Handlinger, som paa et udenlandsk Sted skulle foretages til Vexelrettens Udøvelse eller Bevaring, er den paa dette Sted gjældende Ret afgjørende.

## Femtende Kapitel.

### Forskjellige Bestemmelser.

87. Vexelskyldnere svare een for alle og alle for een for Vexelforpligtelsen<sup>3)</sup>.

Den eller de, der have tegnet Borgen (Aval) paa en Vexelforpligtelse, og den, for hvem saadan Borgen er tegnet, svare ogsaa een for alle og alle for een for Forpligtelsen<sup>4)</sup>.

88. Forekommer der paa en Vexel Underskrifter, som ere falske eller tegnede af Personer, der ikke retsgyldig kunne indgaa

i Forhold til dansk og svensk Vexellov og en i Sverig Bosiddende Udlænding i Forhold til dansk og norsk Vexellov.

<sup>1)</sup> At Vexelforpligtelsen urigtigt i Vexlen angives at være paadraget i henholdsvis Danmark, Norge eller Sverig, kommer ikke i Betragtning, end ikke til Fordel for godtroende Erhververe af Vexlen. — <sup>2)</sup> Omvendt afgiver § 84 ingen Hjemmel for at fravige den almindelige Regel, at henholdsvis Danskes, Nørskes og Svenskes Handleevne bestemmes efter henholdsvis dansk, norsk og svensk Ret ogsaa med Hensyn til deres i Udlandet indgaaede Vexelforpligtelser.

*ad § 85.* En i Udlandet udstedt, efter Udstedelsesstedets Formlovgivning gyldig Vexel vil altsaa være gyldig, uanset at den ikke opfylder Formforskrifterne i §§ 1 og 3, og de senere paa en saadan Vexel i Danmark tegnede Erklæringer ville have vexelretlig Gyldighed, forsaavidt de for deres Vedkommende stemme med den danske Vexellovs Fordringer. Paa den anden Side er en, endog af en Dansk, Norsk eller Svensk i Udlandet udstedt Vexel, der tilfredsstiller den nordiske Vexellovs, men ikke Udlandets Formforskrifter, ugyldig, medmindre Forpligtelsen er paatagen overfor dansk, norsk eller svensk Mand. — Ifølge Vexellovens §§ 19 og 32 maa Iagttagelsen af den nordiske Lovgivnings Regler om Vexelomgangen antages at være Betingelse for Vedligeholdelse af Regreskrav overfor danske, norske eller svenske Vexelskyldnere ogsaa med Hensyn til Vexler, som ere udstedte i Udlandet.

<sup>3)</sup> Dette gælder bl. a. ogsaa Flere, som i Forening have tegnet Akcept paa, udstedt eller endosseret en Vexel. — <sup>4)</sup> Overhovedet maa den blotte Navnetegning paa en Vexel, selv om den ikke staar under et andet Navn, naar den ikke maa opfattes som f. Ex. Akcept, Endossement, Værgeerklæring, Vidneerklæring eller andet saadant, af den godtroende Erhverver kunne gøres gjældende som vexelretlig Medskyldnerforpligtelse, i alt Fald naar der ikke kan være Tvivl om, hvem Navnetegneren i saa Fald maa være Medskyldner med.

*ad § 88.* Bestemmelsen maa anvendes analogisk, naar formelt lovlig Vexelunderskrifter lide af andre Ugyldighedsgrunde, f. Ex. naar Underskriften er fremtvungen, eller naar Vexlens Indhold er forfalsket.

lands lag. Är han efter den lag oberättigad dertill, och åtager han sig här i riket<sup>1)</sup> sådan förbindelse, vare han ändå därför ansvarig, så vida han efter här gällande lag må vexelförbindelse ingå<sup>2)</sup>.

85. Giltighet af hvarje vexelförbindelses form varde pröfvad efter lagen å den ort, der förbindelsen är ingången. Men uppfylla utomlands tecknade vexelförbindelser här gällande lags fordringar, vare då de förbindelser, som sedan här i riket å vexeln tecknas, giltiga, ändå att de utomlands ingångna förbindelserna voro bristfälliga efter utländsk lag. Likaledes hafve vexelförbindelser, som inländsk man utomlands åtager sig till svensk, norsk eller dansk man, giltighet, såvidt de uppfylla här gällande lags fordringar.

86. I fråga om sättet att verkställa åtgärder, som å utrikes ort böra vidtagas till utfövanne eller bevarande af vexelrätt, lände till efterrättelse den å sådan ort gällande lag.

## Femtonde kapitlet.

### Allmänna bestämmelser.

87. Vexelgäldenärer svare en för alla och alla för en för sina förbindelser<sup>3)</sup>.

Den eller de, som å vexelförbindelse tecknat borgen (aval), samt den, för hvilken sådan borgen tecknats, svare oek en för alla och alla för en för samma förbindelse<sup>4)</sup>.

88. Förekomma å vexel underskrifter, som äro falska eller tecknade af personer, de der icke kunna med laga verkan ingå vexel-

in this Kingdom<sup>1)</sup>, he becomes bound by the obligation, provided that according to the laws which apply here he may contract liabilities on bills of exchange<sup>2)</sup>, though by the laws of his own country he is incapable of doing so.

85. The validity as regards form of an obligation according to the law of bills is governed by the laws applicable at the place where the obligation has been contracted. If, however, the obligations on bills of exchange contracted abroad satisfy the requirements of the present Act, the declarations which in this Kingdom are subsequently written on such bills are valid in spite of the circumstance that the obligations contracted abroad were incomplete according to the foreign law. Similarly, the obligations on bills of exchange which a native contracts abroad towards a Dane, Norwegian or Swede, are valid, provided that they satisfy the provisions of this Act.

86. With regard to the proceedings in fulfilment of those requirements which at a foreign place must be observed in order that the rights according to the law of bills may be exercised and preserved, the laws which apply at the place in question are decisive.

### Chapter XV.

#### Miscellaneous provisions.

87. The parties liable on a bill of exchange are jointly and severally responsible for the obligations arising from the bill in question<sup>3)</sup>.

The person or persons who have given a guarantee (aval) for the obligation on a bill of exchange, and the person for whom such guarantee has been given, are jointly and severally responsible for the obligation in question<sup>4)</sup>.

88. If there are signatures on a bill of exchange which have been falsified or written by persons who cannot lawfully contract liabilities on bills, or if there are

a person resident in Norway is a foreigner in regard to the Danish and Swedish Bills of Exchange Acts, and a person resident in Sweden a foreigner in regard to the Danish and Norwegian Bills of Exchange Acts.

1) That the liability according to the law of bills is incorrectly indicated in the bill in question as having been contracted in Denmark, Norway or Sweden respectively does not come into consideration, not even in favour of transferees in good faith of the bill. — 2) On the other hand, § 84 does not authorize any deviation from the ordinary rule, i. e. that the capacity to act on the part of Danes, Norwegians and Swedes respectively is regulated according to Danish, Norwegian and Swedish law, as the case may be, also in regard to liabilities on bills of exchange contracted by them abroad.

To § 85. A bill of exchange validly issued abroad in accordance with the formalities applicable at the place of issue, is consequently valid in spite of the circumstance that it does not fulfil the requirements contained in §§ 1 and 3, and the subsequent declarations written on such a bill in Denmark are valid according to the law of bills, provided that in so far as they are concerned they are in accordance with the requirements of the Danish Bills of Exchange Act. On the other hand, a bill of exchange, even when issued by a Dane, Norwegian or Swede abroad, and satisfying the requirements as to formalities of the Scandinavian Bills of Exchange Acts, but not those of the foreign law, is invalid unless the obligation has been contracted towards a Dane, Norwegian or Swede. — According to §§ 19 and 32 of the Bills of Exchange Act the observance of the rules of procedure of the Scandinavian Bills of Exchange Acts is considered as being the condition for the preservation of the right of recourse against Danish, Norwegian or Swedish debtors on bills of exchange, also in respect of bills issued abroad.

3) This, for example, also holds good with regard to several persons who have jointly accepted, issued or indorsed a bill of exchange. — 4) In general, the mere signature on a bill of exchange, even when it has not been written *below* another name, when it is not to be considered as, for example, an acceptance, indorsement, declaration of a guardian or evidence of a witness, etc., may be taken advantage of by a transferee in good faith as an obligation of a co-debtor according to the law of bills, at any rate when it is not subject to any doubt with whom the signatory in such case is the co-debtor.

To § 88. The rule must be applied by way of analogy when formally valid signatures on bills are affected by other reasons of invalidity, for example, when the signature has been obtained by duress, or when the contents of the bill have been falsified.

Vexelforpligtelser, eller findes derpaa Underskrifter, som af anden Grund ikke ere forbindende for dem, i hvis Navn de ere tegnede, medfører Saadant ingen Forandring i de øvrige Vexelskyldneres Ansvar.

89. Vexlens Forevisning til Akcept eller Betaling, Optagelse af Protest samt alle øvrige vexelretlige Handlinger, der skulle foretages hos Nogen, skulle, saafremt anden Overenskomst ikke træffes, ske imellem Kl. 9 Förmiddag og Kl. 7 Eftermiddag i hans Forretningslokale eller, hvis han ikke har saadant, i hans Bolig<sup>1)</sup>. Træffes ikke den, hos hvem der skal protesteres, bliver Protesten at optage i eller ved hans Forretningslokale eller Bolig. Er hans Forretningslokale eller Bolig ikke kjendt, og kan Oplysning derom af den, der foretager Protesten, heller ikke erholdes hos Stedets Politimyndighed, bliver dette at anføre i Protesten<sup>2)</sup>.

90. Skal Forfaldsdag eller anden Tid, som i denne Lov er omhandlet, regnes efter Uger, Maaneder eller Aar, anses den Dag som Forfalds- eller Slutningsdag, der ved sit Navn i Ugen eller sit Tal i Maaneden svarer til den, fra hvilken Tidsregningen begynder. Findes ingen tilsvarende Dag i Slutningsmaaneden, anses dennes sidste Dag som Forfalds- eller Slutningsdag.

91. Indtræffer en Vexels Forfaldsdag paa en Sondag eller anden almindelig Helligdag, anses den næste Sognedag som Forfaldsdag. Indtræffer den Tid, paa hvilken en vexelretlig Handling senest skal foretages, paa en Sondag eller anden almindelig Helligdag, kan den foretages den næste Sognedag. Ligeledes kunne Vexelduplikater, Akcepter og deslige kun forlanges paa en Sognedag.

92. Bliver det som Følge enten af Lovbud (Moratorier og deslige) eller af den almindelige Samfærdsels Standning eller lignende overordentlige Tildragelser (vis major) umuligt for Nogen at foretage en Handling, hvoraf Vexelrettens Bevaring er afhængig, beholder han, udenfor de i tolvte Kapitel omhandlede Tilfælde, sin Ret, saafremt han ufortøvet efter saadan Hindrings Ophor foretager, hvad der paalaa ham.

93. Er Vexelfordringen præskriberet, eller er Vexelretten tabt ved Forsømmelse af den til dens Bevaring foreskrevne Omgang, er dog Vexeleieren<sup>3)</sup> ikke udelukket fra som almindelig Gjældsfordring at indtale hos en Vexelskyldner<sup>4)</sup>, hvad denne vilde blive beriget med paa hans Bekostning<sup>5)</sup>, hvis ethvert Krav bortfaldt.

1) Dersom Vexelbetegnelsen passer paa flere Steder, kan Protest optages paa hvilket som helst af disse. — 2) Protesten (Vindprotest) kan i saa Fald optages, hvor det skal være, f. Ex. paa Politikammeret eller paa Notarialkontoret.

ad §§ 90 og 91. Jvf. § 31.

ad § 92. Modsetningsvis ses af § 92, at individuelle Hindringer for at foretage de paagældende Handlinger ere uden Betydning.

3) Eller den, til hvem en saadan efter almindelige Regler maatte have overdraget sin Ret. — 4) Altsaa efter Ordene: ikke mod Domiiliaten, eller den ikke akcepterende Trassat, men Reglen maa vistnok analogisk anvendes i Forhold til saadanne (jvf. dog ndf. om norsk Ret). — 5) Udoer det Tab, som Vexeleieren har lidt ved Vexlens Forældelse eller Præjudicering, strækker hans Krav efter denne § sig altsaa aldrig.

ad § 93 i øvrigt. Denne §, der er af ikke ringe praktisk Betydning, giver Anledning til megen Tvivl. — I dansk Teori hævdes, at Kravet kun haves mod den Vexelskyldner, der i

förbindelse, eller finnas derå underskrifter, hvilka på annan grund icke äro förbindande för dem, i hvilkas namn de äro tecknade, lände sådant icke till förändring i öfriga vexelgäldenärers ansvarighet.

89. Vexels uppvisande till godkännande eller betalning, verkställande af protest samt alla öfriga åtgärder enligt denna lag, hvilka hos någon vidtagas, skola, der annan öfverenskommelse ej träffas, verkställas mellan klockan 9 förmiddagen och 7 eftermiddagen i hans affärslokal eller, om han icke har sådan, i hans bostad<sup>1)</sup>. Träffas ej den, mot hvilken skall protesteras, varde protesten verkställd vid hans affärslokal eller bostad. Är hans affärslokal eller bostad icke känd, och kan upplysning derom af den, som verkställer protesten, icke heller erhållas hos ortens polis myndighet, varde förhållandet i protesten anmärkt<sup>2)</sup>.

90. Då förfallodag eller annan tid, som i denna lag är omförmäld, skall räknas efter vecka, månad eller år, varde den dag för förfallo- eller slutdag ansedd, som genom sitt namn i veckan eller sitt tal i månaden motsvarar den, från hvilken tidräkningen börjas. Finnes ej motsvarande dag i slutmånaden, varde den månadens sista dag ansedd för förfallo- eller slutdag.

91. Inträffar vexels förfallodag å söndag eller annan allmän helgedag, vare nästa sökendag ansedd såsom förfallodag. Infaller tid, då åtgärd enligt denna lag sist bör företagas, på söndag eller annan allmän helgedag, må den å nästa sökendag företagas. Likaså må vexelduplett, godkännande och dylikt endast å sökendag äskas.

92. Varder det, i följd af antingen lagbud (moratorium) eller ock afbrott i den allmänna samfärdseln eller liknande utomordentliga tilldragelser (vis major), för någon omöjligt att företaga en handling, hvaraf vexelrättens bevarande är beroende, hafve han, utom i de fall, som i tolfte kapitlet omförmälas, sin rätt förvarad, derest han oförtöfvadt efter sådant hinders upphörande företager hvad honom ålåg.

93. Är vexelfordran preskriherad, eller har vexelrätten gått förlorad genom försummelse att företaga någon för dess bevarande föreskrifven handling, stånde dock vexelinnehafvaren<sup>3)</sup> öppet att, såsom i vanligt skuldfordringsmål, hos vexelgäldenär<sup>4)</sup> utsöka hvad denne till fordringssegarens skada<sup>5)</sup> skulle vinna, der fordringen förfölle.

signatures on a bill which for some other reason are not binding on the persons in whose names they have been written, such circumstances do not bring about any change of the liabilities of the other debtors on the bill.

89. The presentment of a bill of exchange for acceptance or payment, making protest and all other acts which, according to the law of bills, are to be performed in respect of any person, shall, in the absence of any other agreement, take place between 9 A. M. and 7 P. M. at his business premises, or if he has no such premises, at his residence<sup>1)</sup>. If the person against whom a protest shall be made cannot be found, the protest shall be made at his office or residence. If his office or residence is not known, and if the person who makes the protest cannot obtain information on the subject from the police of the place, such circumstance shall be mentioned in the protest<sup>2)</sup>.

90. If the day of maturity or any other time mentioned in this Act is to be calculated by means of weeks, months or years, that day is considered as the day of maturity or the day closing a period which corresponds to the day, the week or month from which the period commences. If there is no corresponding day in the last month of a period, the last day of this month is considered as the day of maturity or the last day of a period.

91. If the day of maturity of a bill of exchange occurs on a Sunday or other general holiday, the next business day is considered as the day for payment. If the latest time at which an act must be performed according to the law of bills occurs on a Sunday or some other general holiday, such act shall be performed on the next business day. Similarly, duplicates of bills of exchange, acceptance, etc. may only be demanded on a business day.

92. If as a consequence either of legal provisions (moratoria, etc.) or of a general suspension of the traffic or other similar extraordinary occurrences (*force majeure*), it is impossible for any person to perform an act on which the preservation of the right under bills of exchange law is dependent, such person, outside the cases mentioned in the twelfth Chapter, maintains his right, provided that immediately on the cessation of the obstacle he performs the act which was incumbent on him.

93. If the claim on a bill exchange is prescribed, or the right according to the law of bills has been lost owing to the circumstance that an act necessary for its preservation has been omitted, the holder<sup>3)</sup> of the bill is nevertheless not precluded from claiming like an ordinary creditor from the debtor on the bill<sup>4)</sup>, that which would accrue to the latter at his expense<sup>5)</sup> if the claim became extinct.

<sup>1)</sup> If the terms of the bill in question are applicable to several places, protest may be made at any of them. — <sup>2)</sup> The protest (*Vindprotest*) in such case may be made at any place, for example at the police office or at the office of a notary.

To §§ 90 and 91. Compare § 31.

To § 92. By way of contrast it results from § 92 that individual obstacles to the performance of the acts in question are without importance.

<sup>3)</sup> Or the person to whom according to the ordinary rules he may have transferred his right. — <sup>4)</sup> Consequently according to the text: not against the domicilee, or the drawee who does not accept, but by way of analogy the rule must no doubt apply to these persons (compare, however, below in regard to the Norwegian law). — <sup>5)</sup> According to this Article his claim consequently never exceeds the loss which the holder of the bill has suffered owing to the prescription or prejudice of the bill.

To other points of § 93. This Article, which is of no small practical importance, is subject to much doubt. — The *Danish* theory maintains that the claim can only be advanced against

94. Med Hensyn til de Regler, som blive at anvende i Vexelsager for at fremme deres hurtige Afgjørelse, gjælder, hvad derom særligt fastsættes.

## Anden Afdeling. Om egne Vexler.

(Dansk-norsk Text.)

95. Hvad der i denne Lov er fastsat om trasserede Vexler, gjælder ogsaa om Vexler, der lyde paa at indfries af Vexeludstederen selv (egne Vexler), dog med de Undtagelser, som følge deraf, at Udstederen hæfter, som om han var Akceptant, og at særlig Akcept af saadanne Vexler ikke udfordres, samt at, hvad der i tiende Kapitel er fastsat om Vexelduplikater, ikke paa dem bliver at anvende. Ei heller maa deslige Vexler udstedes til egen Ordre.

det Øjeblik, da Vexelretten bortfalder, stod som den, der tilsidst vilde have den materielle Pligt at dække Vexlen, at denne, bortset fra senere Forskydninger af Dækningspligten, er den, for hvis Regning Vexlen første Gang er materielt udgiven, og at Kravet uden Hensyn til Vexelskyldnerens Valutaforhold gaar ud paa det Beløb, som han er materielt dækningspligtig med, altsaa ordentligvis Vexlens fulde Beløb. Tendensen i dansk Retspraxis gaar formentlig nærmest i Retning af at godkende denne Opfattelse; men dog lade de mange foreliggende Domme sig langfra alle forlige med et saadant enkelt, konsekvent gennemført Synspunkt, og særlig lægge flere af dem udtrykkelig Vægt paa, om den til Betaling efter § 93 Indstævnte maa antages at have faaet Valuta for at paatage sig Vexelforpligtelsen. Af væsentlig Betydning for § ens Anvendelse er det selvfølgelig, hvorledes Bevisbyrden fordeles. Naar Vexelejeren har fæstet oplyst, at Indstævnte engang har været den Dækningspligtige, maa det formentlig være dennes Sag at godtgøre, at han ikke længere er det, eller at han har afgivet Dækning, og videre maa der vistnok af de oprindelige Deltagere i Vexelnegotiet kunne forlanges Oplysning om, hvad de vide om, hvem den virkelige Kredittager er. — *Svensk Praxis* antager dog, at Vexelejeren har Bevisbyrden for, at Sagvolderen endnu er den dækningspligtige, hvorved den praktiske Betydning af § en i høj Grad indskrænkes. — At ethvert Krav efter Vexlen skal være bortfaldet, for at der kan være Tale om Krav efter § 93, antages ikke i dansk Ret. Saledes kan Berigelseskrav have mod de Vexelskyldnere, hvis Vexelpligt er bortfaldet, selv om Vexelkravet mod Akceptanten endnu bestaar. — For *norsk Rets Vedkommende* bemærkes, at der endnu kun foreligger forholdsvis faa Retsafgjørelser, navnlig af Hoiesteret, angaaende Forstaaelsen af Vexellovens § 93. I den norske Theori antages Kravet efter denne § ikke at opstaa, saalænge Præskription eller Præjudice ikke er indtraadt overfor samtlige Vexelskyldnere, derunder ogsaa Akceptanten, medmindre der hos denne sidste forgæves har været søgt Fyldestgjørelse efter Vexlen. Heller ikke antages det, at Berigelseskravet kan gjøres gjeldende mod andre end de virkelige Vexelskyldnere. Med Hensyn til Bevisbyrden er det antaget, at naar Berigelseskravet rettes mod Trassenten, har denne i Regelen Bevisbyrden, naar han negter at blive beriget ved Vexelrettens Bortfald (jfr. Hoiesteretsdom af 21./10. 1892 „Norsk Retstidende“ for 1893, S. 163 ff.), medens det modsatte læres med Hensyn til Akceptanten og Endossenterne. En Vexelskyldner, som først indfrier Vexlen efter dens Præskription eller Præjudice, har ikke Adgang til at reise noget Krav efter Vexellovens § 93, jfr. den ovennævnte Dom.

94. I fråga om de regler, som skola tillämpas i vexelmål för att främja deras skyndsamma afgörande, gälla hvad derom särskildt stadgas.

## Andra afdelningen. Om egna vexlar.

(Svensk text.)

95. Hvad i denna lag är stadgad om dragna vexlar gälla äfven om vexlar, som äro ställda att inlösas af vexelgifvaren själf (egna vexlar), dock med de undantag, som följa deraf, att vexelgifvaren häftar såsom vore han godkännare, att särskildt godkännande af sådana vexlar ej erfordras, samt att hvad i tionde kapitlet stadgas angående vexeldupletter å dem icke eger tillämpning. Ej heller må dylika vexlar utställas till egen order.

*ad § 94.* Paa Grund af Sammenhængen med den særlig for Sverigs Vedkommende fra de andre Landes Ret meget afvigende Civilproces har man opgivet ethvert Forsøg paa at inddrage Vexelprocessen i Loven. Den er ordnet for Sverigs Vedkommende ved Indførelseslovens § 5 (ndf. S. 30), for Danmarks Vedk. ved Lov 28 Maj 1880 §§ 1—9 (ndf. S. 31 ff.) og for Norge ved Lov 17 Juni 1880 §§ 1—9 (ndf. S. 33 ff.). Den danske og den norske Lov ere i det Væsentlige indbyrdes overensstemmende.

*ad § 95.* Der er Intet til Hinder for, at en egen Vexel domicilieres (§ 4) eller for, at en særskilt Domiciliat opgives (§ 43). Domicilieret er den, naar den har et fra Udstederens Bosted forskelligt Betalingssted, og vistnok ogsaa, naar den, uden at angive Udstederens Bosted, angiver et fra Udstedelsesstedet forskelligt Sted som Betalingssted. — En med saadan særskilt

94. As regards the rules which are to apply to proceedings on bills of exchange with a view to accelerating their speedy settlement, special legal provisions will be enacted.

## Part II.

### Bills drawn on oneself (Promissory notes).

95. The provisions of this Act in regard to bills drawn on other persons also apply to bills issued payable by the issuer of the bill himself (bills drawn on oneself or promissory notes), subject to the exceptions which result from the circumstance that the drawer is liable as if he were the acceptor, and that express acceptance of such bills is not required, and that the provisions of the tenth Chapter regarding duplicates of bills do not apply to them. Nor may such bills be issued to one's own order.

the debtor on the bill who at the time when the right according to the law of bills is extinguished is the person who in the last place would be under the obligation of providing for the bill; that this person, apart from subsequent shiftings of the obligation to cover, is the person for whose account the bill was in fact originally issued, and that the claim, without regard to the relations in respect of value of the debtor on the bill, is equivalent to the amount which he has an actual obligation to provide, consequently as a rule the whole amount of the bill. The tendency of Danish legal practice presumably lies particularly in the direction of recognizing this point of view; but the many available judgments cannot by any means be all reconciled with such a simple and consistently deduced point of view, and in particular several of them expressly lay stress on the question whether the person sued for payment according to § 93 is to be supposed to have received value so as to take upon himself the obligation in accordance with the law of bills. It is of course of material importance for the application of the Article how the burden of proof is allotted. When the holder of the bill has established that the person sued has once been the person liable to make provision, it is presumably the concern of the latter person to prove that he no longer has this liability incumbent on him, or that he has made provision, and further the original participants of the transaction in respect of the bill in question may presumably be requested to give information as to what they know in regard to who is the real taker of credit. — *Swedish* practice, however, admits that it is incumbent on the holder of the bill to prove that the defendant is still the person liable to make provision, which to a high degree limits the practical importance of the Article. — *Danish* law does not admit that every claim arising from the bill must be extinct in order that there may be a question of a claim according to Article 93. Consequently a claim on the ground of enrichment may be advanced against the debtors on a bill whose liability according to the law of bills has become extinct, even if the claim against the acceptor on the bill is still existent. — In regard to *Norwegian* law it must be observed that comparatively few legal decisions are available, in particular, such as are rendered by the Supreme Court, in regard to how § 93 of the Bills of Exchange Act shall be interpreted. The Norwegian theory does not assume that a claim in accordance with this Article arises so long as prescription or prejudice has not occurred in respect of all the debtors on the bill, amongst whom also the acceptor, unless satisfaction in accordance with the bill has been sought in vain from the latter. Nor is it admitted that the claim on the ground of enrichment can be advanced against other persons than the real debtors on the bill. With regard to the burden of proof it is admitted that when the claim on the ground of enrichment is advanced against the drawer, the burden is as a rule incumbent on the latter when he refuses to be enriched, on the right according to the law of bills becoming extinct (compare judgment rendered by the Supreme Court of 21 October 1892 "Norwegian Legal Gazette" of 1893, p. 163 et seq.), whereas the reverse is taught with regard to the acceptor and the indorsers. A debtor on a bill who does not pay the bill until after it is prescribed or prejudiced, has no right to advance any claim according to § 93 of the Bills of Exchange Act (cf. the aforesaid judgment).

To § 94. Owing to the circumstance that the Civil Procedure, in particular that of Sweden, differs very much in the three countries, it has been necessary to renounce all attempts to include the procedure on bills of exchange in the Act. As regards Sweden, it is regulated by § 5 of the Act of Introduction (below p. 30), as regards Denmark by the Act of 28 May 1880 §§ 1—9 (below p. 31 et seq.), and as regards Norway by the Act of 17 June 1880 §§ 1—9 (below p. 33 et seq.). The Danish and Norwegian Acts agree on the essential points.

To § 95. There is nothing which prevents a bill drawn on oneself from being domiciled, (§ 4) or a particular domicilee from being indicated (§ 43). Such a bill of exchange is domiciled when it is payable at a place other than that of the person who has issued it, and certainly also when the bill, without indicating the place of residence of the issuer, indicates as the place of

(Dansk.)

96. Det bestemmes ved kgl. Anordning, naar denne Lov skal træde i Kraft. Forordning angaaende trasserede Vexler af 18de Maj 1825 og Fdn. indeholdende samtlige særegne Regler angaaende indenbys Vexler af 7 April 1843 ophæves fra samme Tid, dog at disse Forordninger fremdeles komme til Anvendelse paa Vexler, der ere udstedte, forend nærværende Lov træder i Kraft.

(Norsk.)

96. Nærværende Lov træder i Kraft 1ste Januar næste Aar. Fra samme Tid ophæves Bestemmelserne i Norske Lovs 5—13—6 til 21 samt Lov om indenbys Vexler af 13de September 1830 og Lov om Forandring i og Tillæg til Lovgivningen om Vexler af 20de August 1842. Dog komme de ældre Lovbestemmelser fremdeles til Anvendelse paa Vexler, der ere udstedte, forend nærværende Lov træder i Kraft.

Hvorefter alle Vedkommende sig have at rette.

Givet paa Amalienborg,  
den 7de Maj 1880.  
Under Vor Kongelige Haand  
og Segl.

Christian R.  
(L. S.)

J. Nellesmann.

Thi have Vi antaget og bekræftet, ligesom Vi herved antage og bekræfte denne beslutning som Lov.

Givet paa Stockholms Slot  
den 7de Mai 1880.  
Under Vor Haand og Rigets  
Segl.

Oscar.  
L. S.

Lehmann.

Det alla, som vederbör, hafva sig hörsamligen att efterrätta. Till yttermera visso hafve Vi detta med egen hand underskrifvit och med Vårt Kongl. sigill bekräfta lätit.

Stockholms slott  
den 7 Maj 1880.

Oscar.  
(L. S.)

Nils von Steyern.

Domiciliat forsynet Vexel kan være vanskelig at skælné fra en trasseret Vexel, men den retlige Forskel er klar nok: den egne Vexel kan ikke fordres akcepteret. — Anvendelige paa egne Vexler ere følgende af Vexellovens forudgaaende Bestemmelser: Kap. I (dog at ingen Trassatus skal nævnes i Vexlen, at Betalingsstedet, naar intet saadant er særlig angivet, maa antages at være Vexlens Udstedelsessted som Udstederens vexelretlige Hjemsted, jvf. § 4, 2St., og at egne Vexler ikke maa udstedes til egen Ordre). — Kap. III. — Kap. IV med Undtagelse af §§ 17 og 18. (Udstederen af en egen domicilieret Vexel, der ikke angiver Domiciliat, maa ifølge Vexellovens § 24, 2 Pk. antages selv at ville indfri Vexlen paa Betalingsstedet), hvorhos § 19 paa egne Vexler maa anvendes saaledes, at Vexlen inden de angivne Frister skal forevises til Paategning af dateret Sigt, og eventuelt protesteres, saa at Vexelretten i modsat Fald tabes overfor Endossenterne, men ikke overfor Udstederen, der jo hæfter som Akceptant. — Af Kap. V kun § 23, 1 St. (indirekte) og § 24 (jvf. Bmkg. ved Kap. IV). — Af Kap. VI kun § 30, jvf. §§ 25—27, 28, 4P. og 30, 2St. — Kap. VII saaledes at Undladelse af Forevisning og Protest efter Vexellovens § 32 medfører Tab af Vexelret mod Endossenterne, men ikke mod Udstederen, der jo hæfter som Akceptant. Udstederens Ansvar overfor sidste Vexelejer bestemmes efter § 36, ikke efter § 50. — Kap. VIII med Undtagelse af § 41, 2 Pk. Udstederens Ansvar overfor pligtmæssig indfriende Endossenter bestemmes efter Analogien af § 52. — Kap. IX kun at der med Hensyn til Anvendelsen af §§ 56—61 ikke bliver Spørgsmaal om Regres for manglende Akcept, men kun for ikke betryggende Akcept. — Af Kap. X ere kun Bestemmelserne om Kopier anvendelige paa egne Vexler, hvorimod Bestemmelserne om Duplikater allerede som Følge af § 68, 2Pk. maa være uanvendelige samt, — Kap. XI—XV med de Modifikationer, der følge af, at Udstederen hæfter som Akceptant, og at der ved egne Vexler ikke er Tale om Regres for manglende Akcept.



(Danish.)

96. A Royal Ordinance will determine the date when this Act shall come into force. The Ordinance concerning bills of exchange of 18 May 1825 and the Ordinance containing the special provisions concerning bills issued at and circulating within the same place of 7 April 1843 shall be repealed from the same date; these Ordinances shall however continue to apply to bills issued before the date on which the present Act comes into force.

All persons concerned shall act accordingly.

Given at Amalienborg,  
the 7th May 1880.  
Under Our Royal Hand  
and Seal.

Christian R.

(L. S.)

J. Nellemann.

(Norwegian.)

96. The present Act comes into force on the first of January next year. The provisions of the Norwegian Law 5—13—6 to 21 and the Act concerning bills issued at and circulating within the same place of 13 September 1830, and the Act concerning the modification and supplementation of the legislation concerning bills of exchange of 20 August 1842 shall be repealed from the same date. The previous legal rules, however, will continue to apply to bills issued before the date on which this Act comes into force.

We have consequently assented to and confirmed, and we hereby assent to and confirm this enactment as law.

Given at Stockholm Castle  
the 7th May 1880  
Under Our Hand and the  
Seal of the Kingdom.

Oscar.

(L. S.)

R. Kierulf.

Lehmann.

(Swedish.)

96. The present Act comes into force on the first of January next year. The provisions of the Norwegian Law 5—13—6 to 21 and the Act concerning bills issued at and circulating within the same place of 13 September 1830, and the Act concerning the modification and supplementation of the legislation concerning bills of exchange of 20 August 1842 shall be repealed from the same date. The previous legal rules, however, will continue to apply to bills issued before the date on which this Act comes into force.

We have consequently assented to and confirmed, and we hereby assent to and confirm this enactment as law.

All persons concerned shall obediently act accordingly. In testimony of which We have also signed this by Our Own Hand and let it be confirmed by Our Royal Seal.

Stockholm Castle the  
7th May 1880.

Oscar.

(L. S.)

Nils von Steyern.

payment a place different from the place of issue. — It may be difficult to distinguish such a bill provided with a particular domicile from a bill drawn on a third person, but the legal difference is clear enough: it cannot be required that a bill drawn on oneself shall be accepted. — Of the aforesaid provisions of the Bills of Exchange Act the following apply to bills drawn on oneself: Chapter I (excepting that no drawee may be named in the bill, that the place of payment, when it is not specially indicated, is supposed to be the place of issue of the bill owing to the circumstance that it is the domicile of the issuer according to the law of bills (compare § 4, second paragraph), and that bills drawn on oneself must not be issued to one's own order). — Chapter III. — Chapter IV with the exception of §§ 17 and 18 (the issuer of a domiciled bill drawn on oneself, who does not indicate any domicile, is according to § 24, second sentence, of the Bills of Exchange Act, supposed to intend to pay the bill himself at the place of payment), and § 19 must be applied to bills drawn on oneself to the effect that the bill in question must be presented for annotation of the date of presentment, and eventually be protested within the periods indicated and that, in the contrary case, the right in accordance with the law of bills is lost against the indorsers, but not against the issuer, who as a matter of course is liable as acceptor. — Of Chapter V only § 23, first paragraph (indirectly) and § 24 (cf. the remark on Chapter IV). — Of Chapter VI only § 30: compare §§ 25—27, 28, fourth sentence, and 30, second paragraph. — Chapter VII, to the effect that the omission of presentment and protest in accordance with § 32 brings about the loss of the right according to the law of bills against the indorsers, but not against the issuer, who as a matter of course is liable as acceptor. The liability of the issuer towards the last owner of the bill is regulated according to § 36, not according to § 50. — Chapter VIII, with the exception of § 41, second sentence. The liability of the issuer towards indorsers who pay the instrument is fixed in analogy to Art. 52. — Chapter IX, excepting that with regard to the application of §§ 56—61 there is no question of recourse for non-acceptance, but only for insecurity of acceptance. — Of Chapter X, only the provisions concerning copies apply to bills drawn on oneself, whilst the provisions concerning duplicates are inapplicable as a consequence of § 68, second sentence; and — Chapter XI—XV, subject to the modifications resulting from the circumstance that the issuer is liable as acceptor, and that in the case of bills drawn on oneself there is no question of recourse for non-acceptance.

**Kongl. Maj:ts Nådiga Förordning  
om nya vexellagens införande och hvad i afseende derå  
iakttagas skall;<sup>1)</sup>**

gifven Stockholms slott den 7 Maj 1880.

Vi Oscar, med Guds nåde, Sveriges, Norges, Götes och Vendes Konung, göre veterligt: det Vi, med Riksdagen, funnit godt att, i fråga om den under innevarande dag utfärdade nya vexellagens införande och hvad i afseende derå iakttagas skall, förordna som följer:

§ 1. Den vexellag, som nu gillad och antagen är, så ock hvad här nedan stadgas, skall gälla från den 1 Januari 1881 för alla vexlar, som derefter utgifvas.

2. Genom nya lagen upphäfves vexellagen den 23 Augusti 1851, tillika med § 21 i förordningen den 10 Augusti 1877 om nya utsökningslagens införande och hvad i afseende derå iakttagas skall.

3. Angående förfarandet då vexel förkommit förordnas som följer:

Har vexel förkommit, ege den, som vexeln förlorat, hos Rätten i betalningsorten göra ansökan om vexelns dödande, och inlemne då afskrift af samma vexel, eller sådan uppgift om dess innehåll, som Rätten pröfvar nödig för vexelns säkra igenkännande. Visar sökanden sannolik anledning att, vexeln verkligen förkommit; varde offentlig stämning af Rätten utfärdad och å dess dörr anslagen, så ock tre gånger, minst fjorton dagar emellan hvarje gång, i allmänna tidningarna införd, hvarigenom innehafvare af vexeln kallas att den vid Rätten uppvisa inom år och dag sedan stämningen i tidningarna sist infördes, om vexeln då var förfallen, men eljest inom år och dag från förfallotiden. Var der ej vexeln inom föreskrifven tid uppvist, och fullföljes derefter ansöknings, gifve Rätten utslag, hvarigenom vexeln dödas.

4.<sup>2)</sup> I fråga om verkställande af protest stadgas:

Protest må verkställas, förutom af notarius publicus på sätt i 81 § nya vexellagen stadgas, i stad af magistratsperson och å landet af kronofogde eller länsman i orten eller af magistratsperson från närmaste stad eller af annan person, som af Konungens Befallningshafvande i länet blifvit dertill förordnad; och skall dervid ojäfvigt och skrifkunnigt vittne närvara.

Protokoll, i hvilket protest blifvit införd, skall ock af vittnet underskrifvas.

5. Om laga domstol och rättegång i vexelmål gälla följande stadganden:

1. Domstol i vexelmål vare Rådstufvurätt i den stad, der svaranden bor eller anträffas, men, om han å landet bor eller anträffas, Rådstufvurätten i närmaste stad derintill.
2. Vexelinnehafvare må för hela sin fordran stämma en af vexelgäldenärerna, och stående det i hans fria val hvilken af dem han först stämma vill.
3. Stämning i vexelmål skall, der sökanden det äskar, meddelas till samma dag, som den sökes, om Rätten då sitter och svaranden är så till hands, att han kan före rättegångstimmans slut sig infinna.
4. Pröfvar Rätten sökandens påstående vara af den beskaffenhet att det genast bifallas må; döme då till betalning och förordne tillika att, i brist deraf, utmätning strax ske må; dock skall för inrikes vexel, som blifvit för bristande

<sup>1)</sup> For Danmarks og Norges Vedkommende foreligger ikke nogen saadan særlig Indførelseslov, idet Regler svarende til §§ 1 og 2 indeholdes i dansk og norsk Vexellovs § 96, Regler om Mortifikation (§ 3) i den almindelige Civilret (jvf Vexellovens § 73) og Regler om Protest og Vexelproces (§§ 4 og 5) henholdsvis i dansk Lov 28 Maj 1880 [se ndf. S. 31 ff.] og norsk Lov 17 Juni 1880 [se ndf. S. 33 ff.]. — <sup>2)</sup> Som ændret ved Lov 24 Sept. 1886.

**His Royal Majesty's Gracious Ordinance  
concerning the introduction of the new Bills of Exchange Act  
and that which in regard to this shall be observed<sup>1)</sup>  
given at Stockholm Castle the 7th May 1880.**

We Oscar, by the Grace of God, King of Sweden, Norway, the Goths and the Wends, make known: that We, in concert with the Riksdag, have found good to order as follows with regard to the coming into force of the new Bills of Exchange Act promulgated on the present day, and that which concerning this shall be observed:

§ 1. The Bills of Exchange Act which is now approved and sanctioned, and also that which is enacted below, shall apply from 1 January 1881 to all bills of exchange issued subsequently to that date.

2. The Bills of Exchange Act of 23 August 1851, together with § 21 of the Ordinance of 10 August 1877 concerning the introduction of the new Execution Act and that which in that respect is to be observed, are repealed by the new Act.

3. The procedure in the case of the loss of a bill of exchange shall be as follows:

If a bill of exchange has been lost, the person who has lost the bill shall apply to the Court of the place for payment with a view to having the bill annulled, and also deliver a copy of the same bill, or such an indication of its contents as the Court considers necessary for the certain recognition of the bill. If the applicant can prove that the loss of the bill is in fact probable, the Court issues a public summons and posts it on the door of the Court, and also publishes the summons in the public papers three times, with an interval of at least fourteen days between each publication, by which summons holders of the bill are requested to present it to the Court within a year and a day of the last publication of the summons in the newspapers, if the bill in question was then due for payment, but if not, within a year and a day of the day of maturity. If the bill is not presented to the Court within the prescribed time, and if the application is subsequently proceeded with, the Court renders a judgment annulling the bill.

4<sup>2)</sup>. With regard to the formalities of protest the following rules shall apply:

Protest, besides being made by a public notary in the manner prescribed in § 81 of the new Bills of Exchange Act, must be made in towns by a member of the magistracy and in the rural districts by the bailiff of the Crown or the local bailiff of the place or by a member of the magistracy of the nearest town or by some other person who by the King's representative in the county has been authorized for this purpose: protest shall be made in the presence of an irreproachable witness who can write.

The record in which the protest is taken down shall be signed by the witness.

5. The following rules shall apply with regard to the competent courts and the procedure to be applied in bills of exchange causes:

1. The competent court in a bills of exchange cause is the Town Hall Court of the town where the defendant is resident or found, but if he lives or is found in a rural district, the Town Hall Court of the nearest town.
2. A holder of a bill of exchange must summon one of the persons liable on the bill in respect of his whole claim, and he is at liberty to decide which of them he will summon first.
3. A summons in a bills of exchange cause shall, where the plaintiff requests such a course, be issued for the same day as it is applied for, if the Court is then sitting and the defendant is so near at hand that he may appear in court before the sitting is closed.
4. If the Court finds that the demand of the plaintiff is of such a nature that it must be immediately approved of, the Court then condemns the defendant to make payment, and also orders that in default of payment a seizure

<sup>1)</sup> In regard to Denmark and Norway there is no such special Act of Introduction, the rules corresponding to §§ 1 and 2 being found in § 96 of the Danish and Norwegian Bills of Exchange Act, the rules concerning annulment (§ 3) in the general civil law (compare § 73 of the Bills of Exchange Act), and the rules concerning protest and procedure on bills of exchange (§§ 4 and 5) in the Danish Act of 28 May 1880 (see below p. 31 et seq.) and the Norwegian Act of 17 June 1880 (see below p. 33 et seq.) respectively. — <sup>2)</sup> As modified by the Act of 24 Sept. 1886.

betalning protesterad, utmätning mot vixelgifvaren eller öfverlåtare ej verkställas förr än tre dagar förflutit från det han bevisligen blifvit kräfd.

5. Är målet af den beskaffenhet, att det ej kan å första rättegångsdagen afgöras; då må Rätten, der kåranden det äskar och omständigheterna pröfvas dertill föranleda, ålägga svaranden att nedsätta penningar i allmänt ränteri eller ställa antaglig pant eller borgen samt förbjuda honom att, der sådant ej fullgöres, resa från orten före sakens slut, vid det äfventyr, som för öfverträdande af reseförbud är i 153 § utsökningslagen stadgadt.

6. Dom i vixelmål gånge, der den vinnande det äskar, i verkställighet genom utmätning och det utmättas försäljning ändå att ändring i domen sökes; vare dock den, som vunnit, skyldig att ställa pant eller borgen för hvad honom tilldömdt blifvit, der han, innan domen vunnit laga kraft, det lyfta vill.

7. Vixelgäldenär ege begångna endast sådana jäf eller invändningar, som äro grundade på vixelns beskaffenhet och i sjelfva vixelrätten, eller till hvilka han kan vara befogad på grund af sitt omedelbara förhållande till kåranden.

8. Beropar sig någon på utländsk lag eller sedvana och vill han att afseende derå fästas skall; vare han skyldig att sin uppgift styrka, der den ej af vederparten medgifves.

Det alla, som vederbör, hafva sig hörsamligen att efterrätta. Till yttermera visso hafve Vi detta med egen hand underskrifvit och med Vårt Kongl. sigill bekräfta låtit.

Stockholms slott den 7 Maj 1880.

O s c a r.

(L. S.)

Nils von Steyern.

## Dansk Lov om Vexelsager og Vexelprotester af 28 Maj 1880.

### § 1. Vexelsager ere:

Sager, som anlægges mod Trassenter, Endossenter og Akceptanter af trasserede Vexler eller mod Udstedere og Endossenter af egne Vexler til Vexlens Betaling eller for at gjøre Vixelregres gjældende.

Sager, som anlægges mod Trassenter og Endossenter af Vexler paa Grund af manglende Akcept, til Betaling af Vexelsummen eller det ikke akcepterede Beløb (Vexellovens § 29) eller mod Trassenter og Endossenter samt Akceptanter paa Grund af manglende eller ikke betryggende Akcept, til Stillelse af Sikkerhed (Vexellovens §§ 25, 26 og 30).

Sager, som anlægges mod dem, der have tegnet Borgen (Aval) for en vixelforpligtet Person til Vexelforpligtelsens Opfyldelse.

2. Vexelsager ere undtagne fra den tvungne Førligsprøve.

3. Under Vexelsager kan det ikke tillades Sagsøgte at fremsætte andre Indsigelser i Realiteten end saadanne,

a) som gaa ud paa, at Sagsøgte ikke ved Underskriftens Meddelelse var mægtig og myndig til saaledes at forbinde sig, eller at Underskriften er falsk, eller

*ad § 1.* Af Overretterne er antaget, at de særlige Vexelprocesregler kun kunne bringes i Anvendelse overfor selve de i § en nævnte Personer, men ikke overfor Enke eller Arvinger, der er traadt i Stedet for nogen af disse.

may immediately be effected; in regard to inland bills of exchange, however, which have been protested for non-payment, a seizure against the drawer or indorsers of the bill shall not be effected until three days have elapsed since the time at which it can be proved that he was summoned.

5. If the cause is of such a nature that it cannot be settled in court on the first day, the Court must, if the plaintiff requests and the circumstances are found to warrant such a course, order the defendant to deposit a certain sum of money in a public financial establishment, or to give an acceptable pledge or security, and forbid him, if such pledge or security is not given, to leave the place until the cause has been determined, under the penalty which is prescribed by § 153 of the Execution Act regarding disobedience to the prohibition from departing.
6. A judgment in a bill of exchange cause, where the successful party requests such a course, is carried out by means of a seizure and sale of the objects seized, even when the judgment has been appealed against; the successful party, however, is bound to give a pledge or security for that which has been adjudged to him, if he desires to collect the amount before the judgment has acquired the force of a settled decision.
7. A person liable on a bill of exchange may only set up such defences or objections as are based on the contents of the bill itself and on the law of bills, or such as he may be entitled to set up on account of his immediate relations with the plaintiff.
8. A person who invokes foreign law or custom, and wishes that it shall be taken into consideration, is bound to prove his allegation if it is contested by the other party.

All persons concerned shall in obedience act accordingly. In testimony of which We have signed this by Our own hand and let it be confirmed by Our Royal Seal.

Stockholm Castle, the 7th May, 1880.

O s c a r

Nils von Steyern.

## Danish Act of 28 May 1880 concerning Bills of Exchange Causes and Protests of Bills of Exchange.

### § 1. Bills of exchange causes are:

Actions which are brought against drawers, indorsers and acceptors of bills drawn on third persons or against issuers and indorsers of bills drawn on oneself (promissory notes) with a view of obtaining payment of the bill in question or of taking recourse in matters of bills of exchange.

Actions which are brought against drawers and indorsers of bills of exchange owing to non-acceptance, with a view of obtaining payment of the amount of the bill or of the amount for which acceptance has not been given (§ 29 of the Bills of Exchange Act), or against drawers, indorsers and acceptors owing to non-acceptance or insecurity of the acceptance, with a view of obtaining security (§§ 25, 26 and 30 of the Bills of Exchange Act).

Actions which are brought against persons who have given a guarantee (aval) for a person who according to the law of bills is liable to perform the obligation resulting from a bill of exchange.

2. Bills of exchange causes are exempted from the compulsory conciliation negotiations.

3. The defendant cannot be permitted to set up defences as to the merits of a cause other than such —

- a) as are founded on an allegation that the defendant when he gave his signature was not competent and authorized to assume such an obligation, or that

*To § 1.* The Appeal Courts have held that the special rules in regard to the procedure in matters of bills of exchange can only be applied to the persons themselves who are mentioned in the Article, and not to widows or heirs who stand in the place of any of those persons.

at der i Vexlens Indhold, efter at han har meddelt sin Underskrift, er foregaaet nogen Forfalskning,

- b) eller som angaa selve Vexlens Indretning og Indhold eller den til Vexelfordringens Vedligeholdelse fornødne Omgang, eller andre i Vexelloven foreskrevne Betingelser for at kunne gjøre Vexelretten gjældende.

Alle andre Indsigelser i Realiteten ere udelukkede fra under Sagen at komme i Betragtning, men det staar Sagsøgte frit for, i Anledning af slige Indsigelser, naar han i sit Tilsvar har opgivet eller i det mindste forbeholdt dem, at anlægge et selvstændigt Erstatningssogsmaal mod Sagsøgeren.

Det paaligger ikke Sagsøgeren med Hensyn til saadanne Indsigelser at stille nogen Sikkerhed, men det maa i alt Fald være Indstævntes Sag, under lagttagelse af Lovens Forskrifter i 1. B. 21. Kap. at søge Sikkerhed ved Arrest.

4. I Vexelsager kunne kun saadanne Modfordringer fremsættes, som enten ere støttede paa, at der ved Forsømmelse med at give den i Vexellovens §§ 20, 30, 42, 45 og 75 omhandlede Underretning er forvoldt Sagsøgte Skade, eller gjøres gjældende til Fyldestgjørelse af den Ret til Likvidation, som tilkommer Sagsøgte ligeoverfor et insolvent Bo. Gaar Paastanden ikke ud paa at faa selvstændig Dom for nogen Del af Modfordringens Beløb, kan Modfordringen gjøres gjældende uden Kontrasogsmaal.

Naar der for Vexelkrav er gjort Arrest og denne derefter forfølges, skal det under Arrestforfølgningssagen, skjøndt den iøvrigt bliver at behandle efter de for Vexelprocessen givne Regler, være tilladt at anlægge Kontrasogsmaal til Arrestens Ophævelse paa Grund af Fordringens Urigtighed og til Erstatning for den ulovlige Forretning.

5. Der maa i Vexelsager uden Sagsøgerens Samtykke ikke gives den Indstævnte mere end 8 Dages Udsættelse til at fremme sit Tilsvar i Sagen, medmindre det klart oplyses, at yderligere Udsættelse er ham nødvendig til sit lovlige Forsvar.

6. Dommen i Vexelsager skal, hvis ikke Sagen har faaet en større Vidtløftighed end den, der for Vexelsager er sædvanlig, eller andre særdeles Omstændigheder ere til Hinder, afsiges senest inden 8 Dage efter Sagens Optagelse til Doms, og ellers saa snart muligt, ligesom og Dommen og Domsakten uden Ophold skal paa Forlangende gives beskreven, alt under saadan Bøde, som Forordningen af 3. Juni 1796 §§ 35 og 39 bestemmer for befalede Sager. Hvis den i D. L. 1—5—8 bestemte Termin til Doms Afsigelse er forsomt, bliver den der fastsatte Bøde at anvende.

Disse Bestemmelser gjælde ogsaa ved de af flere Medlemmer bestaaende Retter, ved hvilke derfor Akten, naar Sagen har været optagen over 8 Dage, skal forsynes med Omgangspaategning overensstemmende med Fdg. 3die Juni 1796 § 23.

7. Naar Dom i de i denne Lov omhandlede Sager er afsagt, og samme af den domfældte Vexelskyldner paaankes, bliver D. L. 1—6—23 og Forordningen af 13. Januar 1792 at anvende, uagtet Dommen ikke umiddelbart indstævnes til Højesteret, saa at, under de i fornævnte Forordning fastsatte Betingelser, Exekution eller i alt Fald Afsætningsforretning<sup>1)</sup> kan iværksættes uden Hensyn til den udtagne Ankestævning.

8. Findes Sagsøgerens Krav paa Sikkerhedsstillelse i Medfør af Vexellovens §§ 25, 26 og 30 begrundet, bliver han, naar derom er nedlagt Paastand, i Dommen at kjende berettiget til strax at nyde Afsætning i saa meget Gods, som er fornødent til Sikkerheden. Saadan Afsætning kan ikke afvendes ved Dommens Paaanke.

9. I Mangel af Fyldestgjørelse af de i § 8 ommeldte Krav paa Sikkerhedsstillelse kan derhos strax foretages Arrest hos den Paagjældende. Fogden maa i saadant

<sup>1)</sup> Om Afsætning jfr. S. 35, Anm. ad §§ 8 og 9.

the signature is forged, or that the contents of the bill have been falsified since he gave his signature;

- b) or as concern the form and contents of the bill itself, or the formalities which are requisite for the preservation of the claim on the bill, or other conditions prescribed in the Bills of Exchange Act in order that a right according to the law of bills can be maintained.

All other defences as to the merits of the cause are excluded from consideration when the case is being taken, but in regard to such defences the defendant is at liberty, when he has made them known in his conclusions or at least has made a reservation in regard to them, to bring an independent action against the plaintiff with a view to obtaining reimbursement.

In regard to such defences it is not incumbent on the plaintiff to give any security, but it is in any case open to the defendant to obtain security by means of a seizure, subject to the observation of the provisions contained in L. B. Chapter 21 of the Code.

4. In bills of exchange causes only such cross-claims may be advanced as are based on the circumstance that by omitting to give the notifications dealt with in §§ 20, 30, 42, 45 and 75 of the Bills of Exchange Act the defendant has sustained damage, or are advanced with a view to the satisfaction of the right of liquidation which the defendant can demand as against an insolvent estate. If his demand has not in view to obtain an independent judgment in regard to any part of the amount of the cross-claim, the cross-claim may be advanced without bringing a cross action.

When in respect of a claim on a bill of exchange a seizure has been effected which is subsequently proceeded with, it shall, during the proceedings of the seizure, although this shall be dealt with generally in accordance with the rules applicable to the bills of exchange procedure, be permitted to bring a counter action with a view to the suspension of the seizure owing to the invalidity of the claim and with a view to compensation for the illegal proceeding.

5. In bills of exchange causes the defendant must not, without the plaintiff's consent, be given more than a period of eight days for the furtherance of his defence in the matter, unless it is clearly stated that further postponement is necessary for his defence in accordance with law.

6. Judgments in bills of exchange causes shall, if the cause in question has not become more complicated than is usual in causes relating to bills of exchange, or other special circumstances do not prevent it, be rendered at the latest within eight days after entering into consideration of the cause for judgment, and in any case as soon as possible. The judgments and the process documents shall be forthwith delivered in writing on request, under pain of such fine as the Ordinance of 3 June 1796 §§ 35 and 39 prescribes regarding privileged causes. If the period prescribed in the Danish Law 1—5—8 in regard to the pronouncement of judgments is passed, the fine which is there prescribed shall be imposed.

These provisions also apply to the courts composed of several members, at which therefore the process documents, when the cause has been under deliberation for more than eight days, shall be provided with a circulation stamp in accordance with the Ordinance of 3 June 1796 § 23.

7. When judgment has been rendered in a cause dealt with in this Act, and the same has been appealed against by the judgment debtor of the bill in question, the Danish Law 1—6—23 and the Ordinance of 13 January 1792 apply, although the judgment is not appealed against direct to the Supreme Court, to the effect that, subject to the conditions fixed in the aforesaid Ordinance, an execution or at any rate a proceeding with a view to a seizure by way of security<sup>1)</sup> may be effected without regard to the appeal which has been lodged.

8. If the claim of the plaintiff with regard to his obtaining a security in accordance with §§ 25, 26 and 30 of the Bills of Exchange Act proves to be justified, he shall, if he so requests, be authorized by the judgment immediately to effect a seizure by way of security of so much property as is required for his security. Such seizure cannot be avoided by an appeal against the judgment.

9. In case the demand for security mentioned in § 8 is not satisfied, a seizure may in general forthwith be effected against the interested person. The bailif in

1) Concerning seizure by way of security compare p. 35, notes to §§ 8 and 9.

Tilfælde, ligesom ellers naar Arrest begjæres i Vexelsager, ikke affordre Rekvirenten nogen Sikkerhed, medmindre den Paagjældende under Arrestforretningen fremsætter nogen af de Indsigelser, der i Medfør af denne Lovs § 3 kunne komme i Betragtning under Vexelsagen. Iøvrigt bør Arresten strax lovlig forfølges.

10. De i Vexellov for Danmark ommeldte Protester udføres af Notarius publicus eller den Embedsmand, som efter Lovgivningen udfører Notarialforretninger. Skulde det Tilfælde indtræffe, at saadan Embedsmands Medvirkning ikke i betimelig Tid kan have, kan Protesten optages af to lovfaste Vidner paa den Maade, som Vexellovens § 82 jfr. §§ 89 og 91 foreskriver; den optagne Protest, ledsaget af selve Vexlen, skal imidlertid inden 2 Søgnedage forelægges for vedkommende Embedsmand, indføres i hans Protokol og vedlægges denne. Sker dette ikke, har Protesten tabt sin Gyldighed. Mundtlig Rekvisition til den eller dem, der skulle optage Protesten, er tilstrækkelig, naar tillige Vexlen overleveres. Af Protestforretningen maa Udskrift ikke meddeles Andre end Protestekvirenten.

11. Denne Lov, der træder i Kraft samme Dag som Vexelloven for Danmark, træder i Stedet for de i Forordningen angaaende trasserede Vexler af 18 Mai 1825 jfr. Forordning indeholdende samtlige særegne Regler angaaende indenbys Vexler af 7 April 1843, indeholdte Bestemmelser om Vexelsager og Vexelprotester, hvilke dog fremdeles komme til Anvendelse med Hensyn til alle Vexler, der ere udstedte før den Dag, da Vexelloven for Danmark træder i Kraft.

Lov om Oprettelse af en Sø- og Handelsret i Kjøbenhavn samt Sø- og Handels-sagers Behandling udenfor Kjøbenhavn af 19 Februar 1861, for saa vidt denne indeholder Bestemmelser, der kunne anvendes ogsaa i Vexelsager, forbliver i Kraft.

## Norsk Lov om Rettergangsmaaden i Vexelsager med Videre af 17 Juni 1880.

### § 1. Vexelsager ere:

1. Sager, som anlægges mod Akceptanter af trasserede Vexler eller Udstedere af egne Vexler til Vexlens Betaling eller mod Trassenter eller Endossenter af Vexler for at gjøre den paa Grund af manglende Betaling opstaaede Vexelregres gjældende.
2. Sager, som anlægges mod Akceptanter af trasserede Vexler eller Udstedere af egne Vexler til Stillelse af Sikkerhed for ikke betryggende Akcept (Vexellovens § 30 jfr. § 95) eller mod Trassenter eller Endossenter af Vexler for at gjøre den paa Grund af manglende eller ikke betryggende Akcept opstaaede Vexelregres til Sikkerhed eller i det i Vexellovens § 29 omhandlede Tilfælde til Betaling gjældende, og
3. Sager, der anlægges mod den, der paa Vexel har tegnet Borgen (aval), til Indtale af hans vexelretlige Forpligtelse (Vexellovens § 87).

### 2. Vexelsager kunne anlægges enten ved Extraret eller ved de almindelige Thinge.

Er Sagen anlagt ved almindeligt Thing, og Sagvolderen begjærer Udsættelse for at fremme sit Tilsvær, er Sagsøgeren berettiget til at forlange den overflyttet til videre Behandling ved Extraret, saafremt der ikke senest 8 Dage derefter holdes almindeligt Thing.

*ad § 2.* Ved „Extraret“ forståes en af Underdommeren efter Sagsøgerens Forlangende for den enkelte Anledning bestemt særlig Retsession til Behandling af Vexelsagen i Modsætning til de ved Lov eller anden gyldig Bestemmelse paa Forhaand fastsatte ordinære Retsessioner til Behandling af Civilsager. Jfr. forøvrigt Oversigten over norsk Civilproces, IV, 3.



such case must not, as in the case when a seizure is requested in matters of bills of exchange in general, ask any security of the plaintiff unless the interested person during the process of the seizure sets up any of the defences which in accordance with § 3 of this Act may be taken into consideration in matters of bills of exchange. Generally the seizure ought to be effected forthwith according to law.

10. Such protests as are dealt with in the Danish Bills of Exchange Act are made by a public notary or the public functionary who according to law is empowered to exercise notarial functions. If the case arises that the co-operation of this functionary cannot be obtained in due time, a protest may be made by two lawful witnesses in the manner which § 82 (compare §§ 89 and 91) of the Bills of Exchange Act prescribes; a protest so made, accompanied by the bill itself, shall within two business days be presented to the competent functionary, be taken down in his record, and remain there. If this does not take place, the protest becomes null and void. An oral request addressed to the person or the persons who are to make a protest is sufficient when the bill is handed over at the same time. A transcript of the proceedings of the protest must not be delivered to any other person than the person requiring the protest.

11. This Act, which comes into force simultaneously with the Danish Bills of Exchange Act, is substituted for all the special rules as to bills of exchange causes and protests of bills of exchange contained in the Ordinance concerning bills of exchange of 18 May 1825 (compare the Ordinance containing the special rules regarding local bills of 7 April 1843); these rules, however, will still apply to all bills of exchange which have been issued before the day on which the Danish Bills of Exchange Act comes into force.

The Act concerning the establishment of a Maritime and Commercial Tribunal in Copenhagen and the procedure in maritime and commercial causes outside Copenhagen of 19 February 1861, in so far as such Act contains any rules which may also be applied to bills of exchange causes, will continue to apply.

## Norwegian Act concerning the Procedure in Bills of Exchange Causes, etc. of 17 June 1880.

§ 1. Bills of exchange causes are:

1. Actions which are brought against acceptors of bills of exchange drawn on third persons or issuers of bills drawn on oneself with a view of obtaining payment of the bill in question, or against drawers or indorsers of bills in order to take recourse owing to non-payment.
2. Actions which are brought against acceptors of bills of exchange drawn on third persons or issuers of bills drawn on oneself with a view of obtaining security in case of insecurity of acceptance (§ 30; compare § 95 of the Bills of Exchange Act), or against drawers or indorsers of bills in order to take recourse owing to non-acceptance or insecurity of acceptance with a view of obtaining security or, in the case mentioned in § 29 of the Bills of Exchange Act, payment, and
3. Actions which are brought against persons who have given guarantees (aval) for bills of exchange in order to obtain performance of their liabilities according to the law of bills (§ 87 of the Bills of Exchange Act).
2. Actions in connection with bills of exchange may be brought either at the extraordinary or ordinary sessions.

If an action has been brought at an ordinary session, and the defendant demands a postponement in order to prepare his defence, the plaintiff has a right to demand that the further proceedings of the action shall be transferred to an extraordinary session, if there is no ordinary session at the latest within eight days of such demand.

To § 2. An "extraordinary session" is understood to be a special session of a court of law acting on a single occasion; at the request of the plaintiff this kind of session is ordered by the judge of the first instance for the purpose of dealing with matters of bills of exchange. The "extraordinary sessions" take place in contrast to the ordinary sessions of law courts, which are prescribed beforehand by statute or some other legal provision for the purpose of dealing with civil causes. Compare in general the exposition of the Norwegian Civil Procedure, IV. 3.

Mægling ved Forligelseskommisionen er ufornoden, hvorimod det paaligger Retten at prove Forlig mellem Parterne.

Sagsøgeren er dog berettiget til at paaklage Sagen for Forligelseskommisionen og i Tilfælde at bringe i Anvendelse Lov af 8de Mai 1869 og 29de Mai 1879 om Paakjendelse af Gjældssager ved Forligelseskommisionen.

Saa vel til Extraret og til de almindelige Thinge som til Forligelseskommisionen, forsaavidt Indklagede bor inden Kommissionsdistriktet, gives Aftensvarsel.

3. Under Vexelsag komme mod Sagsøgerens Protest ikke andre Indsigelser i Realiteten i Betragtning end saadanne:

- a) som angaa selve Vexelens Indretning og Indhold eller den til Vexelfordringens Vedligeholdelse fornødne Omgang eller andre i Vexelloven foreskrevne Betingelser for at kunne gjøre Vexelretten gjældende,
- b) som gaar ud paa, at Sagvolderen ved Underskriftens Meddelelse ikke var myndig til saaledes at forpligte sig, eller at Underskriften er falsk, eller at der i Vexelens Indhold, efterat han har meddelt sin Underskrift, er foregaaet nogen Forfalskning, eller
- c) som ellers vedkommer hans vexelretlige Forpligtelse til Sagsøgeren, og som uden længere Udsættelse end de i § 5 fastsatte 8 Dage ved Dokument eller paa anden Maade bevisliggjøres.

I Anledning af Indsigelser i Realiteten, som ere udelukkede fra at komme i Betragtning, kan Sagvolderen, naar han derom under sit Gjenmæle har taget udtrykkeligt Forbehold, anlægge selvstændigt Erstatningssøgmaal mod Sagsøgeren.

4. Modfordringer kunne alene gjøres gjældende, forsaavidt de støtte sig paa, at der ved Forsømmelse med at give den i Vexellovens § 45 omhandlede Underretning er forvoldt Sagvolderen Skade, eller forsaavidt der handles om Fyldestgjørelse af den Ret til Modregning, der tilkommer ham ligeoverfor et Konkursbo. Gaar Paastanden ikke ud paa at erholde selvstændig Dom for nogen Del af Modfordringens Beløb, kan Modfordringen gjøres gjældende uden Modstævning. Er der for Vexelkrav gjort Arrest, staar det under Arrestforfølgningssagen, skjønt den iøvrigt bliver at behandle efter de for Vexelprocessen givne Regler, Sagvolderen aabent at anlægge Modsøgmaal til Erstatning for den ulovlige Forretning.

5. Der skal i Vexelsager uden Sagsøgerens Samtykke ikke gives Sagvolderen længere Udsættelse end 8 Dage for at fremme sit Tilsvær i Sagen, medmindre det klart oplyses, at yderligere Udsættelse er ham nødvendig til hans lovlige Forsvar. Modsøgmaal til Vidneførsel fra hans Side udkræves ikke.

6. Er Sagen reist til Betaling af bortkommen Vexel, der er mortificeret, eller til hvis Mortification Stævning er udtaget, gjælder ikke de i nærværende Lovs §§ 2, 3 og 5 særskilt bestemte Indskrænkninger i Sagvolderens Adgang til at fremsætte Indsigelser og til at erholde Udsættelse.

7. Vexelsag behandles iøvrigt overensstemmende med de om Gjæsterretsprocessen gjældende Forskrifter, hvad enten den er anlagt ved Extraret eller ved almindeligt Thing.

Indførsel kan ske efter en bekræftet Udskrift af Domsslutningen.

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*ad § 4.* Naar der for Gjæld gjøres Arrest i Skyldnerens Gods, maa Fordringshaveren uden Ophold anlægge Søgmaal mod ham til Stadfæstelse af Arresten og under denne Sag tillige erhverve Dom for det ved Arresten sikrede Pengekrav; er dette støttet til Vexel, kan han efter nærværende § anlægge Arrestsagen som Vexelsag.

*ad § 6.* Om Mortifikation af Vexler se ovenfor (S. 23).

*ad § 7.* Gjæsteretsprocessen er væsentlig udviklet gennem Sædvanen og tilsigter at paaskynde Retsbehandlingen. Den er anvendelig, naar Sagsøgeren, og i visse Tilfælde, naar Sagvolderen er Gjæst, d. v. s. midlertidig personlig tilstede i Retskredsen, hvor Sagen behandles, men boende udenfor. Gjæsteretssager anlægges altid ved Extraret og er undergivet de i §§ 2 og 5

Negotiation before a conciliation committee is unnecessary, whereas on the other hand it is incumbent on the competent court to try to bring about a compromise between the parties.

The plaintiff, however, has a right to take his cause before a conciliation committee and eventually to apply the Act of 8 May 1869 and 29 May 1879 concerning the adjudication of causes of debt before such a committee.

Both in the case of extraordinary and ordinary sessions, as well as of conciliation committees, citations for the following day may be given, provided the defendant is domiciled within the jurisdiction.

3. In bills of exchange actions no other defences as to the merits of the case shall be set up against the protest of a plaintiff than such:

- a) as concern the form and contents of the bill itself, or the formalities necessary for the preservation of the claim on the bill in question, or other conditions prescribed in the Bills of Exchange Act in order to be able to maintain the right according to the law of bills;
- b) as are founded on an allegation that the defendant when he gave his signature was not competent to assume such a liability, or that the signature is forged, or that the contents of the bill have been falsified since he gave his signature, or
- c) as otherwise concern his liability according to the law of bills towards the plaintiff, and can be proved by means of documents or in some other manner without longer postponement than the eight days fixed in § 5.

As to defences bearing on the merits of the case which are excluded from consideration, the defendant, when he has made an express reservation to this effect in his reply, may bring an independent action against the plaintiff with a view to obtaining reimbursement.

4. Cross-claims can only be advanced when they are based on the damage sustained by the defendant owing to the omission to notify him as mentioned in § 45 of the Bills of Exchange Act, or when there is a question of making effective the right of set-off which is available to him as against an estate administered in bankruptcy. If the demand has not in view to obtain an independent judgment in regard to any part of the amount of the cross-claim, the cross-claim may be advanced without a cross action. If an arrest has been effected on account of a claim on a bill, the defendant during the proceedings of arrest, although in general the action must be dealt with according to the special rules of procedure in matters of bills of exchange, is at liberty to bring a cross action with a view to obtaining damages for the unlawful proceeding.

5. In matters of bills of exchange the defendant shall not without the consent of the plaintiff be given a longer period than eight days for the purpose of furthering his defence in the cause, unless it is clearly stated that further postponement is necessary for his defence according to law. It is not necessary that he should bring a cross action with the object of producing evidence by means of witnesses.

6. The limitations of the defendant's right to set up defences and to demand postponements, which are specially fixed in §§ 2, 3 and 5 of the present Act, do not apply if an action has been brought with a view to obtaining payment of a lost bill of exchange which has been annulled, or when a summons has been issued with a view to the annulment of the bill in question.

7. Bills of exchange actions are generally dealt with according to the provisions which apply to the procedure of Visitors' Courts, whether they are taken at extraordinary or ordinary sessions.

Execution may take place in accordance with a certified transcript of the conclusions of the judgment.

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*To § 4.* When an arrest is made of the debtor's property owing to debt, the creditor must forthwith bring an action against him with the object of confirming the arrest, and in the course of this action also obtain a judgment for the money claim which has been secured by the arrest. If this money claim is based on a bill of exchange, he may according to the present Article bring the action of arrest as a bills of exchange action.

*To § 6.* Concerning the annulment of bills of exchange, see above (p. 23).

*To § 7.* The visitors' court procedure has been developed by custom and has in view the acceleration of the legal proceedings. It is applicable when the plaintiff, and in certain cases when the defendant, is a visitor, i. e. temporarily present in person in the jurisdiction where the cause is taken, but resident elsewhere. Visitors' court causes are always taken at

8. Vexelsager paaankes, forsaavidt de angaa en appellabel Gjenstand, lige til Høiesteret og foretages ved Varslets Udløb uden Hensyn til Høiesterets Sessioner. Det længste Varsel i disse Sager er to Maaneder. Med Hensyn til Domme lydende paa Betaling af Vexelgjæld, kommer N. L. 1—6—21 og Forordningen af 13de Januar 1792 til Anvendelse ikke blot, naar Paaanken sker til Høiesteret, men ogsaa, naar den paa Grund af Bestemmelserne om Appel sker til Overretten.

9. Domme, i hvilke Sagsøgeren findes berettiget til Sikkerhed ifølge Vexellovens §§ 25, 26 og 30, skulle, naar Paastand derom nedlægges, lyde paa, at de, forsaavidt Sikkerhedsretten angaar, fyldestgjøres ved, at der gives Sagsøgeren Afsætning i Sagvolderens Gods. Om saadan Afsætning, der ikke afvendes ved Paaanke af Dommen, gjælder, hvad der ellers om Afsætning er bestemt i Forordningen af 13de Januar 1792 jfr. N. L. 1—6—21.

10. De i Vexelloven omhandlede Protester udføres af Notarius publicus eller den Embedsmand, som efter Lovgivningen udfører Notarialforretninger. Skulde det Tilfælde intræffe, at saadan Embedsmands Medvirkning ikke i betimelig Tid kunde have, kunne 2 Stevnevidner og i Nødsfald 2 andre lovfaste Vidner bruges til disse Forretninger; den optagne Protest, ledsaget af selve Vexlen, skal imidlertid inden 7 Dage forelægges for vedkommende Embedsmand, indføres i hans Protokol og vedlægges denne. Sker dette ikke, har Protesten tabt sin Gyldighed.

Mundtligt Forlangende til den eller dem, der skulle optage Protesten, er tilstrækkelig, naar tillige Vexlen overleveres. Udskrift af Protestforretningen, der paa Forlangende pligtes udfærdiget inden 24 Timer, Søn- og Helligdage ikke medregnede, maa ikke meddeles Andre end Protestekvirenten.

11. Ved denne Lov, der træder i Kraft den 1ste Januar næste Aar, ophæves N. L. 5—13—22 til 26 samt Lov angaaende Vexelsagers Behandling ved Retterne af 12te September 1818. De nu gjældende Bestemmelser om Vexelprocessen komme dog fremdeles til Anvendelse med Hensyn til Vexler, som ere udstedte før dette Aars Udgang.

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ovenfor nævnte Regler om Forligsmægling og Aftensvarsel. Dommen skal afsiges inden en bestemt kortere Frist efter Procedurans Tilendebringelse og er exigibel tre Dage efter dens Forkyndelse for Skyldneren. Jfr. forøvrigt Oversigten over norsk Civilproces, IV, 3.

*ad §§ 8 og 9.* Den i N. L. 1—6—21 og Forordning af 13. Januar 1792 samt norsk Lov af 4 Juni 1892 § 32 omhandlede „Afsætning“ er et exekutivt Retsmiddel, som staar til Doms-haverens Raadighed, naar hans Dom paa Grund af, at den er appelleret fra den Dømtes Side, ikke er exigibel. Afsætning er alene anvendelig ved Domme, som gaar ud paa Betaling af Penge, og giver Doms-haveren Panteret i det „afsatte“ Gods, men ikke — som ved Exekution — tillige Ret til at realisere dette og gjøre sig betalt i dets Udbringende. Ved inappellable Domme anvendes ikke Afsætning. Efter dansk Ret gjælder om „Afsætning“ i det væsentlige de samme Regler.

*ad § 10.* „Stevnevidner“ er særlige, af Underdommerne til Forkyndelse af Stevninger ansatte og edfæstede Personer. Jfr. Oversigten over den norske Civilproces, III. Protestgebyrerne er (ifølge Lov af 6 August 1897 § 58) for Vexler, lydende paa 2000 Kr. og derunder, 5 Kr. og for Vexler paa større Beløb 10 Kr. Derfor meddeles ogsaa Udskrift af Protestforretningen og Attestation paa Vexlen om Protesten.

8. Appeals in bills of exchange causes, provided they concern a matter which is subject to appeal, may be brought before the Supreme Court, and are taken at the expiration of the notice given according to law without regard to the sessions of the Supreme Court. The longest notice given in such matters is two months. With regard to judgments ordering payment of debts resulting from bills of exchange, the Norwegian Law 1—6—21 and the Ordinance of 13 January 1791 apply not only when an appeal has been carried to the Supreme Court, but also when an appeal is brought before an Appeal Court in accordance with the rules concerning appeals.

9. Judgments granting the plaintiff a right to obtain security on the basis of §§ 25, 26 and 30 of the Bills of Exchange Act, shall, on his request, in so far as the right of security is concerned, be rendered on the basis that he is authorized to effect a seizure by way of security of the defendant's property. The general rules applicable to seizure by way of security contained in the Ordinance of 13 January 1792 (compare the Norwegian Law 1—6—21), apply to this kind of seizure, which is not prevented by an appeal being brought against the judgment.

10. Protest according to the Bills of Exchange Act is effected by a public notary, or by the functionary who according to law is authorized to exercise notarial functions. If a case occurs where the co-operation of such a functionary cannot be obtained in due time, two process servers, or in case of necessity, two other lawful witnesses, shall be employed for this purpose; a protest so made, accompanied by the bill of exchange itself, shall however within seven days be submitted to the competent functionary, be taken down in his record and remain there. If this does not take place, the protest becomes null and void.

An oral request addressed to the person or the persons who are competent to effect protests, is sufficient when the bill is handed over at the same time. No other person than the person requiring the protest has a right to obtain a copy of the protest proceeding, which shall be ready within twenty-four hours after demand, Sundays and holidays not included.

11. The Norwegian Law 5—13—22 to 26 and the Act concerning the procedure before the Courts of Justice in bills of exchange causes of 12 September 1818 are repealed by this Act, which comes into force on the 1st of January of next year. The rules concerning the procedure in bills of exchange causes which are now in force will continue to apply to bills which have been issued before the end of the present year.

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extraordinary sittings of the competent court, and are subject to the rules concerning negotiations with a view to obtaining a compromise and the citation at a day's notice as mentioned above in §§ 2 and 5. Judgment must be rendered within a definite short time upon the close of the proceedings, and execution thereon may issue in three days after its declaration to the debtor. Compare generally the exposition of the Norwegian Civil Procedure, IV. 3.

To §§ 8 and 9. Seizure by way of security dealt with in the Norwegian Law 1—6—21 and the Ordinance of 13 January 1792 and the Norwegian Act of 4 June 1892, is an executive judicial measure which is at the disposal of the successful party when execution on his judgment cannot be issued owing to the circumstance that the judgment debtor has appealed against the judgment. Seizure by way of security is only applicable to judgments ordering the payment of money, and gives the successful party a pledge-right on the objects "seized", but not — as in the case of seizure by way of execution — also a right to realise it and obtain payment out of the proceeds. Seizure by way of security is not applied to judgments which are not subject to appeal. The same rules in the main apply to seizure by way of security according to Danish law.

To § 10. "Process servers" are special persons engaged on oath by the judges of the first instance for the purpose of serving summonses. Compare the exposition of the Norwegian Civil Procedure, III. The protest fees (according to Act of 6 August 1897 § 58) in the case of bills of exchange of 2000 kroner and less are five kroner, and in the case of bills exceeding that amount, ten kroner. A transcript of the protest proceedings with an attestation of the protest on the bill in question are also given for the same fees.

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## Vexlens Stempling.

### 1. Om Vexlers Stempling efter *dansk* Ret

findes Reglerne i Stempellov 19 Febr. 1861 §§ 54, 62b og 90, jvf. Lov Nr. 30 af 21 Marts 1874 § 1: Ethvert Vexleexemplar (ikke Kopier) er stempelpligtigt, men Endossement ikke.

Stempelafgiften er

a) for korte Vexler (d. v. s. saadanne, som ikke lyde paa længere Tid end 8 Dage fra Sigt eller 14 Dage fra Dato) uden Hensyn til Summens Størrelse: 20 Ore.

b) for alle andre Vexler:

Til inkl. 1000 Kr.	0,20 Ore.	Til inkl. 6000 Kr.	1,00 Ore.
„ „ 2000 „	0,35 „	„ „ 8000 „	1,35 „
„ „ 4000 „	0,70 „	„ „ 10000 „	1,70 „

osv. gennemsnitlig c.  $\frac{1}{2}$  pro mille.

Om Stempling af Vexler, udstedte indenfor Kongeriget Danmark hedder det i Bkgor. Nr. 157 af 8 Aug. 1895, at de ifølge Stempelovens § 54 ere stempelpligtige, naar de ere trukne til Betaling her eller her akcepteres, paatales eller anmeldes ved nogen Ret, samt at enhver Ihænde-haver af Vexlen, derunder ogsaa Akceptanten, er pligtig at drage Omsorg for Stempelafgiftens Berigtigelse og paadrager sig Bøde-ansvar efter den nævnte Lovbestemmelse, naar Stemplingen ikke berigtiges i rette Tid.

Det tilføjes, at, forsaavidt Stemplingen berigtiges ved Anvendelse af Stempel-mærker, er det kun Vexlens første Ihænde-haver her i Landet, der kan foretage Kassationen af Stempelmærkerne, og at, hvis dette forsømmes, kan Manglen ikke afhjælktes ved, at en senere Ihænde-haver paasætter et Stempelmærke, men Stemplingen kan da kun berigtiges ved Indsendelse af Vexlen: i Kjøbenhavn til General-direktoratet for Skattevæsenet og udenfor Kjøbenhavn til Amtet, jvf. Indenrigsmin. Bkgor. af 24 Marts 1862.

### 2. Om Vexlens Stempling efter *norsk* Ret.

I Norge blev Stempelpligt for Vexler først indført ved Lov af 17 Marts 1902, hvis § 1 bestemmer, at saafremt Stortinget derom fatter Beslutning, hvilket senere stadig har fundet Sted, skal der erlægges Stempelafgift af Vexler, som er betalbare eller bringes i Omlob i Riget; ogsaa for Duplikater og Kopier gjelder saadan Stempelpligt, naar de benyttes særskilt. Vexler, trukne fra Udlandet paa Udlandet og betalbare i Udlandet (Transitvexler) er ikke stempelpligtige, selv om de i Norge paaføres Endossementspaategninger. Afgjørelse af Stempelpligten sker ved Paa-klæbning af Stempelmærker, som bliver at kassere af nogen, som er ansvarlig for Afgiftens Berigtigelse. I Regelen indtræder Stempelpligten ved indenlandske Vexler, naar Udstederen, og ved udenlandske Vexler, naar første indenlandske Indehaver giver Dokumentet fra sig til nogen efter samme berettiget. Præsenteres en Vexel til Akcept, maa Stempelafgiften være berigtiget, forinden Akceptanten giver Vexlen tilbage, selv om Vexlen er trukket fra Udlandet og betalbar i Udlandet. Naar en Vexel præsenteres til Betaling eller forlanges protesteret de non solutione, nden at Stempelpligt tidligere er indtraadt, maa den ligeledes stemples, forinden Betaling eller Protest finder Sted. For Berigtigelse af pligtig Stempelafgift er enhver under Straf af Bøder ansvarlig, som inden Riget udsteder, modtager, endosserer, præsenterer, akcepterer, betaler eller paa lignende Maade har Befatning med Dokumentet, hvad enten hans Navn er tegnet paa dette eller ikke. Bliver Stempelafgiften ikke berigtiget af nogen derfor ansvarlig, efterstemples det enten af Retsskriveren eller af vedkommende Regjeringsdepartement (Finansdepartementet).

## Stamping of bills of exchange.

### I. Concerning the stamping of bills of exchange according to *Danish law.*

The rules dealing with this matter are to be found in the Stamp Act of 19 Feb. 1861 §§ 54, 62 b and 90 (compare the Act No. 30 of 21 March 1874 § 1): Every duplicate of a bill of exchange (not copies) is subject to stamping, but not indorsements.

The stamp duty is

a) for short term bills (i. e. such as are issued payable at most within eight days after sight or fourteen days after the date of issue) without regard to the amount of the sum payable: 20 öre.

b) for all other bills of exchange:

Not exceeding 1000 Kroner	0,20 öre	Not exceeding 6000 Kroner	1,00 öre
" " 2000	0,35 "	" " 8000	1,35 "
" " 4000	0,70 "	" " 10000	1,70 "

and so on, in the average increasing by  $\frac{1}{6}$  per thousand.

The Publication No. 157 of 8 Aug. 1895 says, with regard to the stamping of bills of exchange issued within the Kingdom of Denmark, that according to the Stamp Act § 54 they are subject to stamping when they are drawn payable here, or are to be accepted, prosecuted or notified to any court here, and that any holder of a bill of exchange, including also the acceptor, is liable to see that the stamp duty is paid and is subject to a fine according to the aforesaid Publication when the stamp duty is not paid in due time.

It is added that, when the stamp duty is paid by means of stamps, it is only the first holder of the bill in this country who is entitled to cancel the stamps, and that, if this is omitted, the omission cannot be made good by the circumstance that a subsequent holder puts a stamp on the bill in question, but the stamping can in such case only be made good by the sending of the bill: in Copenhagen, to the General Taxation Director, and outside Copenhagen, to the County Authority: compare the Publication of the Minister of the Interior of 24 March 1862.

### II. Concerning the stamping of bills of exchange according to *Norwegian law.*

The stamp duty for bills of exchange was not introduced in Norway until the Act of 17 March 1902, of which Art. 1 prescribes that if the Storting passes a resolution to this effect, which subsequently has always taken place, stamp duty shall be paid on bills of exchange which are payable or issued within the Kingdom. Such stamp duty also applies to duplicates and copies when they are used separately. Bills of exchange drawn from foreign countries on foreign countries and payable abroad (transit bills) are not subject to stamp duty even when they are indorsed in Norway. The stamp duty is defrayed by means of stamps stuck on the bills; the stamps are cancelled by some person responsible for the payment of the duty. Norwegian bills are as a rule subject to stamp duty when the issuer, and foreign bills when the first native holder, hands the document in question over to some person who according to the document has a right to hold it. If a bill of exchange is presented for acceptance, the stamp duty must have been defrayed before the acceptor returns the bill, even if the bill has been drawn in a foreign country and is payable abroad. When a bill of exchange is presented for payment or its protest is demanded for non-payment, without having previously been subject to stamp duty, the bill must also be stamped before payment or protest can be made. Any person who within the Kingdom issues, receives, indorses, presents, accepts, pays or in a similar manner has to do with the document in question, whether his name has been written on it or not, is liable to pay stamp duty under penalty of a fine. If the stamp duty is not paid by some person responsible for such payment, the instrument is subsequently stamped either by the registrar of the court, or by the competent Ministry of the Kingdom (The Ministry of Finance).

Den norske Stempelafgift er for Tiden bestemt saaledes:

Naar Vexlens Paalydende ikke overstiger Kr. 200,00	Kr. 0,10
„ „ „ er over Kr. 200,00, men ikke over Kr. 400,00	„ 0,20
„ „ „ „ „ 400,00, „ „ „ 600,00	„ 0,30
„ „ „ „ „ 600,00, „ „ „ 800,00	„ 0,40
„ „ „ „ „ 800,00, „ „ „ 1000,00	„ 0,50

og naar Paalydendet er større end Kr. 1000,00, Kr. 0,50 yderligere for hvert Tusinde Kroner eller Del af dette Beløb.

### 3. Om stämpelafgift och protestkostnader för vaxel enligt *svensk rätt.*

Inländska vaxlar äro numera fria från stämpel.

Där vaxel ställes att å utrikes ort betalas eller är utfärdad å utrikes ort, skall vaxeln, då den utställes eller, om den utfärdas utom riket, innan den här i riket öfverlåtes eller till godkännande eller betalning företes, förses med stämpel af 50 öre för belopp, ej öfverstigande 1000 kronor, och derutöfver 50 öre för hvarje påbörjad tusental kronor, hvarå den lyder, dock att frihet från stämpel äger rum för vaxel, som är ställd att vid uppvisandet betalas af medel, som hos bank eller bankir föras i räkning för utställaren, äfvensom för vaxel, som är dragen från utlandet på utlandet och endast är betalbar i utlandet, så ock för vaxel, som ställes att betalas till statsförvaltningen tillhörande allmänt verks eller styrelsens order.

Är vaxel utfärdad i flera exemplar och har ett af dem blifvit med nyssnämnda särskilda stämpel försedt, vare de öfriga från sådan stämpel fria.

Godkänd eller protesterad vaxel skall, då den för vinnande af betalning hos offentlig myndighet företes, förses med stämpel af 25 öre för hvarje fulla 100 kronor af vaxelsumman, dock att ingen stämpel fordras vid bevakning i Konkurs.

Protokoll öfver notarialprotest skall förses med stämpel af 50 öre för hvarje ark. (K. F. ang. stämpelafgiften den 2 Juni 1899, §§ 1 och 8 vid „Protest“ och „Vaxel“).

I lösen för notarialprotest betales 2 kronor för första arket och 1 krona för hvar ett af de öfriga. För besök i och för protest eger dessutom protestförrättaren uppbära 1 krona, däri äfven ersättning till det vid besöket närvarande protestvittnet ingår.

Behöfves resa för protest, få förrättningsman och vittne ytterligare ersättning, hvardera för skjutslega efter en häst. För af protestförrättaren undertecknad bevis å vaxeln om protesten eger han uppbära 1 krona (K. F. ang. expeditionslösen d. 7 Dec. 1883 § 1 vid „Bevis“ och „Protest“).

## De nordiske Checklove.

### Lov om Checks og andre Sigtanvisninger.

Vi Christian den Niende, af Guds Naade Konge til Danmark, de Venders og Goters...

gøre vitterligt:

Rigsdagen har vedtaget og Vi ved Vort Samtykke stadfæstet følgende Lov:

### Lov om visse Anvisninger (Checks).

Vi Oscar, af Guds Naade Konge til Norge og Sverige, de Goters og Venders;

gjøre vitterligt:

At Os er bleven forelagt det nu forsamlede ordentlige Storthings Beslutning af 15de Juli dette Aar, saalydende:

### Checklag;

gifven Stockholms Slott den 24 Mars 1898.

Vi Oscar, med Guds nåde, Sveriges, Norges, Götes och Vendes Konung,

gøre vitterligt:

Att Vi, med Riksdagen, funnit godt i nåder förordna som följer:



The tariff of the Norwegian stamp duty is at present fixed as follows:

When the amount of a bill of exchange does not exceed Kr. 200,00	Kr. 0,10
„ „ „ exceeds Kr. 200,00 but not „ 400,00	„ 0,20
„ „ „ „ „ 400,00 „ „ „ 600,00	„ 0,30
„ „ „ „ „ 600,00 „ „ „ 800,00	„ 0,40
„ „ „ „ „ 800,00 „ „ „ 1000,00	„ 0,50

and when the amount exceeds Kr. 1000,00 a further Kr. 0,50 for each thousand Kroner or part of this amount.

### III. Concerning the stamp duty and the costs of protest of bills of exchange according to *Swedish law*.

Swedish bills of exchange are at present exempt from stamp duty.

When a bill of exchange is issued payable at a place abroad, or has been issued at a place in a foreign country, the bill shall, when it is issued, or if it has been issued outside the Kingdom, before it is indorsed or presented for acceptance or payment in this Kingdom, be provided with a stamp of 50 öre for amounts not exceeding 1000 kroner, and for amounts exceeding that sum 50 öre for each further fraction of a thousand kroner. A bill of exchange is, however, exempt from stamp duty when it has been issued payable at sight out of funds which are standing for the account of the issuer in a bank or with a banker; bills of exchange which are drawn from a foreign country on a foreign country and are only payable in a foreign country, and also bills which are issued payable to the order of an exploitation or an administration of the State are also free of stamp duty.

If a bill of exchange has been issued in several copies, and one of them has been provided with the aforesaid special stamp, the others are free of stamp duty.

A bill of exchange which has been accepted or protested shall, on presentment for payment to a public authority, be provided with a stamp of 25 öre for each full 100 kroner of the amount of the bill; no stamp is, however, required on presentment of a bill to a bankrupt's estate.

Each sheet of the record taken down by a notary in the case of a protest of a bill of exchange shall be provided with a stamp of 50 öre. (The Royal Ordinance on Stamp Duties of 2 June 1899, §§ 1 and 8; see "protest" and "bills of exchange".)

The fee for a protest made out by a notary is two kroner for the first sheet and one krone for each succeeding sheet. For visits in view of and for making out the protest the public functionary in addition has the right to charge one krone, which fee also includes compensation to the witness of the protest present at the visit.

If a protest necessitates travelling the public functionary and witness may make further charges, each of them according to the harness of one horse. The functionary effecting the protest has a right to charge one krone for writing a note on the bill certifying that protest has been made. (The Royal Ordinance concerning administrative fees of 7 Dec. 1883 § 1; see "attestations" and "protest").

## The Scandinavian Cheques Acts.

An Act concerning cheques and other orders payable at sight.

We, Christian the Ninth, by the Grace of God, King of Denmark, the Wends and the Goths . . .

make known:

The Riksdag has passed and We by Our consent have sanctioned the following Act:

An Act concerning certain orders [Cheques].

We, Oscar, by the Grace of God, King of Norway and Sweden, the Goths and the Wends;

make known:

That the resolution of the regular Storting now assembled, passed on the 15th July of this year, has been submitted to Us, and reads as follows:

Cheques Act;

given at Stockholm Castle the 24th March 1898.

We, Oscar, by the Grace of God, King of Sweden, Norway, the Goths and the Wends,

make known:

That We, in concert with the Riksdag, have found good graciously to order as follows:

(Dansk-Norsk.)

## § 1. En Check skal indeholde:

udtrykkelig Benævnelse af Check, indført i selve Texten;  
den Pengesum, der skal betales;  
til hvem Betalingen skal ske;  
dens Navn, der skal indfri Checken (Trassaten);  
det Sted, hvor Betalingen skal ske;  
Udstedelsesdagen samt  
Ustederens Underskrift.

Den kan kun lyde paa Betaling ved Forevisning (ved Sigt, paa Anfordring eller lignende); som betalbar ved Forevisning anses den ogsaa, naar ingen Betalingstid er angiven.

Som Betalingssted gjælder i Mangel af anden Angivelse det ved Trassatens Navn anførte Sted.

Er den Sum, som skal betales, nævnt flere Gange, men med forskellige Beløb, gælder det Beløb, som er mindst.

Indeholder en Check Tilsagn om Rente, anses det som uskrevet.

2. En Check kan lyde paa Betaling til Ihændehaveren. Lyder den paa Betaling til en bestemt Person eller Ihændehaveren, anses den, bortset fra Forskriften i § 10, som udstedt til Ihændehaveren.

3. De Regler, som i *Vexellov for Danmark* (norsk Text: *Lov om Vexler*) af 7de Mai 1880 er givne

om Overdragelse af Vexler,

(Svensk.)

## § 1. Check skall innehålla:

uttrycklig, i själfva texten införd benämning af check;  
det penningebelopp, som skall betalas;  
till hvem betalningen skall ske;  
dens namn, som skall infria checken (trassat);  
den ort, hvarest betalningen skall ske;  
dens underskrift, som utställer checken, och dagen för dess utställande.

Check må ej utställas till betalning å annan tid än vid uppvisandet („vid anfordran“, „vid sigt“ eller dylikt). Är ej tid för betalningen angiven, anses den betalbar vid uppvisandet.

Såsom betalningsort gälle, der ej annat angifvits, den vid trassatens namn utsatta ort.

Är den summa, som skall betalas, flere gånger utsatt, men till olika belopp, gälle det, som minst är.

Utfästes i check ränta, vare det ogilt.

2. Check må kunna lyda på betalning till innehafvaren. Lyder check på betalning till viss man eller innehafvaren, vare, utom i det afscende, hvarom i 10 § sägs, så ansedt, som vore den utstald till innehafvaren.

3. Med de afvikelser, som af bestämmelserna i denna lag föranledas, skall hvad i vexellagen den 7 Maj 1880 finnes stadgadt

om öfverlåtelse af vexel (indossament),

*ad § 1.* En Check adskiller sig navnlig paa følgende Punkter fra en Vexel: I Texten maa findes Benævnelsen Check i Stedet for Benævnelsen Vexel. — En Check kan kun lyde paa Betaling ved Sigt. — En Check kan ikke lyde paa, at den skal betales af Ustederen selv. — En Check kan lyde paa Betaling til Ihændehaveren (§ 2). — Det er ikke nødvendigt at anføre Udstedelsesstedet i en Check. — Tegnes Akcept paa en Check, er saadan Paategning uden Retsvirkning (§ 8). — Ved Overdragelsen af en Check til Trassaten overføres ikke Ret til Regres mod Usteder eller Endossenter, medmindre Trassaten har flere Forretningsafdelinger, og Overdragelsen sker til en anden Afdeling end den, paa hvilken Checken er trukken (§ 6, 1Pk.). En Check, som er blevet overdraget til Trassaten, maa ikke overdrages videre (§ 6, 2Pk.). — Endossement af en Check maa ikke skrives paa en Kopi (§ 4). — Vil Checkejeren bevare sin Ret til Regres overfor Ustederen og Endossenterne, maa han ferevise Checken til Betaling indenfor visse Frister (§ 10), der ere langt kortere end de, der gælde for Sigtvexlers Forevisning. — I Stedet for Protest kan træde en af Trassaten paa Checken skreven Erklæring (§ 9). — Forældelsesfristen for Checkejers Regresfordring regnes fra Checkens Udstedelsesdag (§ 11). — Den vigtige extinctive Regel i Vexellovens § 76 kommer ikke til Anvendelse ved Checks, men disse maa for saa vidt behandles efter de almindelige Regler om Gældsbreve. — Ej heller komme de særlige i Vexellovens §§ 74 og 75 indeholdte Regler om Mortifikation, men kun de almindelige Mortifikationsregler til Anvendelse paa Checks. — Som fundamentale Regler vedrørende Checks maa fremhæves, at Udstedelsen af en Check ikke har Cessionsvirkning (d. v. s. ikke bevirker en Overførelse af Checkudstederens mulige Krav paa Trassaten til Checkerhververen), at en Check ligesom andre Anvisninger kan kontramanderes, og at Modtagelse af en Check ligesaa lidt som Modtagelse af andre Anvisninger er endelig Betaling.

*ad § 3.* Følgende §§ i Vexelloven maa ifølge udtrykkelig eller stiltiende Hjemmel i Checkloven anses anvendelige paa Checks med de af Checkloven følgende Lempelser, derunder særlig den, at det kun er Reglerne om Sigtvexler, der ere anvendelige paa Checks: § 2, 1 Pk., § 4, 1 Pk., § 5, § 8, §§ 9—16, § 31, § 32, 1 Pk., § 35, § 37, § 38, § 39, § 42, § 43, §§ 45—55, (mulig §§ 62—64), § 66, § 68, 1 og 3 Pk., §§ 78—80, §§ 81—83, §§ 84—86,

§ 1. A cheque shall contain:

the express designation of a cheque inserted in the text itself;

the amount of money to be paid;

the person to whom payment is to be made;

the name of the person who is to pay the cheque (the drawee);

the place at which payment is to be made;

the day of issue; and

the signature of the drawer.

It may only be issued payable on presentment (at sight, on demand, etc.); it is also considered as payable on presentment when no time for payment is indicated.

In default of other indication the place of payment is the place indicated with the name of the drawee.

If the sum to be paid is mentioned several times, but in different amounts, the amount payable is the smallest.

If a cheque contains a promise of interest, such promise is considered as if it had not been written.

2. A cheque may be issued payable to the bearer. If it is issued payable to a definite person or the bearer, it is considered, apart from the provision of Art. 10, as issued payable to bearer.

(Danish-Norwegian.)

3. The rules enacted in the Bills of Exchange Act for Denmark (Norwegian text: Act concerning Bills of Exchange) of the 7th May 1880

concerning the transfer of bills of exchange,

(Swedish.)

3. Subject to the modifications which result from the provisions of this Act, that which has been provided in the Bills of Exchange Act of 7th May 1880

concerning the transfer of a bill of exchange (indorsement),

*To § 1.* A cheque differs from a bill of exchange notably in the following points: The text must contain the term "cheque" instead of the term "bill of exchange". — A cheque may only be issued payable at sight. — A cheque must not be issued payable by the drawer himself. — A cheque may be issued payable to bearer (§ 2). — It is not necessary to indicate in a cheque its place of issue. — If acceptance is written on a cheque, such acceptance has no effect according to law (§ 8). — When a cheque is transferred to the drawee, the right of recourse against the drawer and the indorsers is not transferred unless the drawee has several business branches, and the transfer is made to another branch than the one on which the cheque has been drawn (§ 6, 1st sentence). — A cheque which has been transferred to the drawee must not be transferred further (§ 6, 2nd sentence). — The indorsements of a cheque must not be written on a copy (§ 4). — If the holder of a cheque wishes to preserve his right of recourse against the drawer and the indorsers, he must present the cheque for payment within certain periods (§ 10) which are much shorter than those which apply to the presentment of bills of exchange payable at sight. — Instead of a protest the drawee may write a declaration on the cheque (§ 9). — The period for prescription of the claim of recourse by the holder of a cheque runs from the day of issue of the cheque which is concerned (§ 11). — The important rule concerning extinction contained in § 76 of the Bills of Exchange Act does not apply to cheques, which in general must be dealt with according to the ordinary rules applicable to notes of hand. — Nor do the special rules concerning annulment contained in §§ 74 and 75 of the Bills of Exchange Act, but only the ordinary rules of annulment, apply to cheques. — There must be pointed out as fundamental rules concerning cheques that the issue of a cheque has not the effect of a transfer (i. e. does not bring about the transfer of the possible claim which may exist in favour of the drawer of a cheque on the drawee), that a cheque, like other mandates, may be countermanded, and that the receipt of a cheque is no more a final payment than the receipt of any other mandate.

*To § 3.* The following Articles of the Bills of Exchange Act must, according to express or tacit authorisation contained in the Cheques Act, be considered *applicable to cheques*, subject to the following modifications resulting from the Cheques Act, amongst which must be specially noted the provision that only the rules concerning bills of exchange payable at sight are applicable to cheques: § 2, 1st paragraph, § 4, 1st par., § 5, § 8, §§ 9—16, § 31, § 32, 1st par., § 35,

om Udstederens og Endossenternes  
Ansvar,  
om Vexlers Betaling,

om Regres paa Grund af manglende  
Betaling samt

om Vexelfordrings Præskription,

om utställares och öfverlåtares an-  
svarighet,  
om vexels betaling,

om återgångstalan för bristande be-  
taling,  
om betalningsskyldighet för duplett af  
vexel<sup>1)</sup> samt  
om vexels præsription

skal med de Afvigelser, som følger af Bestem-  
melserne i nærværende Lov, finde Anvendelse  
paa Checks.

4. Endossement af en Check kan ikke  
gyldig skrives paa en Afskrift (Kopi) af  
Checken.

5. At en Check er udstedt til Ihænde-  
haveren, er ikke til Hinder for, at den ved En-  
dossement gjøres betalbar til en bestemt Per-  
son.

6. Ved Overdragelsen af en Check til  
Trassaten overføres ikke Ret til Regres mod  
Udsteder eller Endosser, medmindre Tras-  
saten har flere *Forretningsafdelinger*<sup>2)</sup> og Over-  
dragelsen sker til en anden Afdeling end den,  
paa hvilken Checken er trukken.

En Check, som er bleven overdraget til  
Trassaten, maa ikke overdrages videre.

7. Betaling af en Check maa ikke ske  
til nogen anden end en Bank eller Bankier,  
saafremt der mellem to Streger tværs over  
Checkens Forside findes anbragt Ordene „til  
Bank eller Bankier“ eller anden Paategning,  
der angiver det samme. Er Navnet paa en  
bestemt Bank eller Bankier anført mellem  
Stregerne, maa Betaling kun ske til denne.

Et saadant Paabud kan gives saavel af  
Udstederen som af enhver Checkejer. Det kan  
ikke med Retsvirkning tilbagekaldes eller for-  
andres; dog kan, naar en bestemt Bank eller  
Bankier ikke allerede er nævnt, Navnet paa  
en saadan senere tilføjes.

*Som Bank eller Bankier betragtes ved An-  
vendelsen af Bestemmelserne i denne Paragraf  
enhver, hvis Forretning til Handelsregistret er  
anmeldt som Bankforretning, samt enhver Spare-  
kasse*<sup>3)</sup>.

§ 87, 1 Pk., (og mulig 2 Pk.), § 88, § 89, § 90, § 91, 1 og 2 Pk., § 92, § 93. — Uanvendelige  
ere følgende af Vexellovens §§: § 1 (se Checklovens § 1), § 2, 2 Pk., § 3 (se Checklovens § 1),  
§ 4, 2 Pk. (se Checklovens §§ 1 og 10), §§ 6 og 7 (se Checklovens § 1), §§ 17—30, § 32, 2 Pk.  
(se Checklovens §§ 9 og 10), § 33, § 34, § 36, § 40, § 41 (se Checklovens §§ 9 og 10), § 44,  
§§ 56—61, § 65, § 67, § 68, 2 Pk., §§ 69—72, § 73 (se Checklovens § 13), § 74, § 75, § 76, § 77,  
§ 91, 3 Pk., § 94 (se Checklovens § 15) og § 95.

ega motsvarande tillämpning å check.

4. Öfverlåtelse af check må ej tecknas  
å afskrift (kopia) af checken.

5. Utan hinder deraf, att check är ut-  
stald till innehafvaren, må den genom öfver-  
låtelse göras betalbar till viss man.

6. Å check, som, genom öfverlåtelse eller  
annorledes, öfvergått till trassaten, må denne  
ej grunda återgångstalan, utan så är att, der  
trassaten drifver rörelse vid kontor å skilda  
orter<sup>2)</sup>, checken öfvergått till ett annat af  
dessa kontor än det, hvarå den är dragen.

Check, som öfvergått till trassaten, må  
ej vidare utgifvas.

7. Åro mellan tvenne jemnlöpande tvär-  
streck öfver framsidan af en check anbragta  
orden „till bank eller bankir“ eller andra der-  
med liktydiga ord, må betalning ej ske till an-  
nan än bank eller bankir; finnes mellan tvär-  
strecken viss bank eller bankir utsatt, må be-  
taling ej till annan än denne utgifvas.

Påteckning, hvarom nu är sagdt, må af  
enhvar behörig innehafvare af checken an-  
bringas. Sådan påteckning kan ej med laga  
verkan utstrykas, återkallas eller förändras;  
dock må, der ej viss bank eller bankir angifvits,  
tillägg derom göras.

<sup>1)</sup> Detta tillägg i den svenska checklagen är gjordt för att tydligt utmärka att indossa-  
ment får tecknas å checkduplikat (jmf. checklagen § 4). — <sup>2)</sup> Här förefinnes en ej alldeles  
oviktig skiljaktighet mellan den svenska lagen å ena och den dansk-norska å andra sidan, i  
det att den senare gör till förutsättning för regressrätten allenast att inlösen skett vid annan  
„förretningsafdelning“ än den, hvarå checken dragits, under det att den förra uppställer den  
något strängare fordringen att de begge kontoren skola vara belägna å skilda orter. Om bety-  
delsen af „ort“ se vexellagen § 4, not. — <sup>3)</sup> Dette 3dje Stykke findes kun i den danske Lov.

concerning the obligations of the issuer and indorsers,  
concerning the payment of bills of exchange,  
concerning recourse owing to non-payment, and

concerning the obligations of the issuers and indorsers,  
concerning the payment of a bill of exchange,  
concerning recourse owing to non-payment,  
concerning the obligation of paying duplicates of a bill of exchange<sup>1)</sup>, and  
concerning the prescription of a bill of exchange,

concerning the prescription of claims on bills of exchange,  
shall, subject to the modifications which result from the provisions of the present Act, apply to cheques.

shall also apply to cheques.

4. An indorsement written on a copy of a cheque is not valid.

5. The circumstance that a cheque has been issued payable to the bearer does not prevent it from being made payable to a definite person by means of an indorsement.

(Danish-Norwegian.)

(Swedish.)

6. By the transfer of a cheque to the drawee the right of recourse against the drawer or the indorsers is not transferred, unless the drawee has several business branches<sup>2)</sup> and the transfer is made to a branch different from that on which the cheque in question has been drawn.

6. A cheque which by means of an indorsement or otherwise has been transferred to the drawee, does not give the latter the right of recourse, unless the drawee carries on operations at offices situated in several places<sup>2)</sup>, and the cheque has been transferred to an office other than that on which it has been drawn.

A cheque having been transferred to the drawee must not be transferred any further.

A cheque having been transferred to the drawee must not be transferred any further.

7. The payment of a cheque must not be made otherwise than to a bank or a banker, if between two lines across the face of the cheque are found written the words "to bank or banker" or some other indication signifying the same thing. If the name of a definite bank or banker is indicated between the lines, payment must only be made to that bank or banker.

7. If between two parallel cross lines on the face of a cheque the words "to bank or banker" are written, or other words having the same meaning, payment must not be made otherwise than to a bank or a banker; if a certain bank or banker is indicated between the lines, payment must not be made otherwise than to the bank or banker named.

Such an order may be given by the drawer or by any holder of a cheque. It cannot with legal effect be withdrawn or modified; when, however, the name of a definite bank or banker has not already been mentioned, such name may be subsequently added.

The aforesaid order may be written by any person who is the legitimate holder of a cheque. Such order cannot with legal effect be crossed out, withdrawn or modified; in cases where a certain bank or banker has not been indicated, such an addition may, however, be made subsequently.

Any person whose business in the trade register has been recorded as a banking establishment, and any savings bank is considered a bank or banker within the meaning of this Article<sup>3)</sup>.

§ 37, § 38, § 39, § 42, § 43, §§ 45—55 (possibly §§ 62—64), § 66, § 68, 1st and 3rd pars., §§ 78—80, §§ 81—83, §§ 84—86, § 87, 1st par. (and possibly 2nd par.), § 88, § 89, § 90, § 91, 1st and 2nd pars., § 92, § 93. — The following Articles of the Bills of Exchange Act are inapplicable: § 1 (see § 1 of the Cheques Act), § 2, 2nd par., § 3 (see § 1 of the Cheques Act), § 4, 2nd par. (see §§ 1 and 10 of the Cheques Act), §§ 6 and 7 (see § 1 of the Cheques Act), §§ 17—30, § 32, 2nd par. (see §§ 9 and 10 of the Cheques Act), § 33, § 34, § 36, § 40, § 41 (see §§ 9 and 10 of the Cheques Act), § 44, §§ 56—61, § 65, § 67, § 68, 2nd par., §§ 69—72 (see § 13 of the Cheques Act), § 74, § 75, § 76, § 77, § 91, 3rd par., § 94 (see § 15 of the Cheques Act) and § 95.

1) This addition has been made in the Swedish Cheques Act in order to clearly indicate that indorsements may be written on duplicates of cheques (compare § 4 of the Cheques Act). — 2) Here we have before us a difference not entirely unimportant between the *Swedish* Act on the one hand and the Danish-Norwegian Acts on the other, to the effect that the latter make it the only condition of the right of recourse that payment has been made by a "branch office" other than that on which the cheque in question has been drawn, whereas the former lays down the somewhat more rigorous rule that the two offices shall be situated at different places. Concerning the meaning of the word "place" see the Bills of Exchange Act, § 4, note. — 3) This third paragraph is only to be found in the Danish Act.

8. Tegnes Akcept paa en Check, er saadan Paategning uden Retsvirkning.

8. Tecknas å check godkännande till betalning (accept), vare det utan verkan.

9. Vil Checkejeren bevare sin Ret til Regres overfor Udsteder og Endossenter, maa han forevise Checken til Betaling inden saadan Frist, som er bestemt i § 10. At Forevisning er sket, uden at Betaling er opnaaet, godtgøres enten ved en inden Forevisningsfristens Udlob overensstemmende med Reglerne for Vexelprotester optagen Protest eller ved en paa Checken anbragt, af Trassaten eller nogen paa hans Vegne underskreven Erklæring, der tillige angiver Dagen, paa hvilken Forevisningen har fundet Sted. I sidste Tilfælde regnes Fristen for Meddelelsen af den i Vexellovens § 45 foreskrevne Underretning fra den Dag, da Forevisningen ifølge Paategningen fandt Sted.

9. Vill checkinnehafvare mot utställaren eller öfverlåtare bevara sin rätt till återgångstalan, uppvisa checken till betalning inom tid, som i 10 § sägs. Att checken blifvit uppvisad utan att betalning erhållits, skall styrkas antingen genom protest, som inom samma tid verkställts i enlighet med hvad om protest af vaxel gäller, eller ock medelst ett å checken anbragt, af trassaten eller annan å hans vägnar eller af två ojämföriga vittnen<sup>1)</sup> undertecknad intyg, som tillika skall angifva dagen för uppvisandet; skölande, der protest ej verkställts, tiden för meddelande af sådan underrättelse, som i 45 § vexellagen sägs, räknas från den dag, då enligt intyget uppvisandet skedde.

Om Virkningen af en Opfordring til ikke at optage Protest gjælder, hvad i Vexellovens § 42 er bestemt.

Är i fråga om check uppmaning gifven, som i 42 § vexellagen om vaxel sägs, skall om verkan deraf gälla hvad i nämnda lagrum finnes stadgadt.

10. En Check, der er udstedt og betalbar paa et og samme Sted her i Riget, skal forevises til Betaling senest paa den tredje Dag efter Udstedelsesdagen, saafremt den lyder paa Betaling enten til Ihændehaveren eller til en sammesteds boende navngiven Person (med eller uden Tillæget „eller Ihændehaveren“). Andre her i Riget betalbare Checks skal forevises til Betaling senest paa den tiende Dag efter Udstedelsesdagen eller, saafremt der til Checkens Forsendelse paa sædvanlig Maade fra Udstedelsesstedet til Betalingsstedet udkræves en længere Tid end fem Dage, senest paa den femte Dag efter Udlobet af den til saadan Forsendelse nødvendige Tid. Er Udstedelsesstedet ikke angivet i Checken, antages den at være udstedt paa Betalingsstedet. Findes der i en Check, der lyder paa Betaling til en navngiven Person (med eller uden Tillæget „eller Ihændehaveren“), ved dennes Navn tilføjet en Stedsangivelse, antages han at bo paa det angivne Sted.

10. Är check betalbar å samma ort, hvarest den är utställd, skall, för bevarande af rätt till återgångstalan, checken, der den lyder på betalning till viss å den ort bosatt person eller till viss å den ort bosatt person eller innehafvaren eller till innehafvaren, uppvisas till betalning sist å tredje dagen från det den utställdes. Annan inom riket betalbar check skall uppvisas sist å tionde dagen från det den utställdes eller, der för dess befordran i vanlig ordning från den ort, der den är utställd, till betalningsorten erfordras längre tid än fem dagar, sist å femte dagen efter utgången af den tid. Är utställelseort ej utsatt, anses checken vara utställd å betalningsorten. Finnes, der check lyder på betalning till viss person eller till viss person eller innehafvaren, vid checktagarens namn viss ort utsatt, anses han vara bosatt å den ort.

Udlobet den ovenfor bestemte Frist paa en Søndag eller en anden almindelig Helligdag,

Infaller tid, då uppvisandet sist bör ske, på söndag eller annan allmän helgdag, må

ad § 8. Den her givne Regel, der er motiveret ikke blot ved Ønsket om at modarbejde Checks Benyttelse som Kreditmiddel, men tillige ved Frykten for gennem Anerkendelse af accepterede Ihændehaver-Checks at gribe ind i Seddelprivilegier, gælder vel at mærke kun for Checks. Foreligger der en Afvigelse fra Forskrifterne i § 1 om Checkformen, er Anvisningens Akcept gyldig efter almindelige Regler. — Der kan Intet være til Hinder for, at Checken forsynes med Trassatens Bevidnelse af, at Dækning haves til Stede, og saadan Notering gør ikke Checken stempelpligtig. — Det følger af Reglen i § 8, at der ikke bliver Tale om Forevisning til Akcept eller om Regres paa Grund af manglende eller ikke betryggende Akcept.

1) Då den dansk-norska rätten (i motsats till den svenska) för upptagande af protest ej ovilkorligen fordrar offentlig myndighets medverkan utan under vissa villkor tillåter, att protest upptages af 2 vittnen (dansk lov af 28 Maj 1880 § 10 og norsk lov af 17 Juni 1880, § 10) blef det nödigt, för att bringa berörda föreskrifter till reel öfverensstämmelse med hvarandra, att i den svenska lagen medgifva giltighet åt ett af „två ojämföriga vittnen undertecknad intyg“.

8. If an acceptance is written on a cheque, such acceptance does not produce any legal effect.

(Danish-Norwegian.)

(Swedish.)

9. If the holder of a cheque wishes to preserve his right of recourse against the drawer and indorsers, he must present the cheque for payment within such time as is fixed in § 10. That presentment has taken place without payment having been obtained is proved either by a protest made according to the rules of bill protests before the expiration of the time for presentment, or by a declaration written on the cheque and signed by the drawee or some other person on his behalf; such declaration shall also indicate the day on which presentment has taken place. In the latter case the time for the notification prescribed in § 45 of the Bills of Exchange Act is calculated from the day on which presentment according to the declaration took place.

That which is prescribed in § 42 of the Bills of Exchange Act applies in regard to the effect of an invitation not to make protest.

9. If the holder of a cheque wishes to preserve his right of recourse against the drawer or indorsers, he must present the cheque for payment within the time fixed in § 10. That the cheque has been presented without payment having been obtained shall be proved either by means of a protest made in accordance with the provisions applicable to protests of bills of exchange and within the same period, or by means of a declaration written on the cheque and signed by the drawee or some other person on his behalf *or by two irreproachable witnesses*<sup>1)</sup>, a declaration which shall also mention the day on which presentment has taken place; if protest has not been made, the time for the notification mentioned in § 45 of the Bills of Exchange Act shall be calculated from the day on which according to the declaration presentment took place.

If in regard to a cheque such an invitation has been made as is indicated in § 42 of the Bills of Exchange Act, the provisions of the said Act shall apply with regard to the effect of an invitation of this kind.

10. A cheque which has been issued and is payable at the same place in the Kingdom, in order that the right of recourse may be preserved, shall be presented for payment at the latest on the third day after the day of issue, if it has been issued payable either to the bearer or to a person mentioned and resident at the same place (with or without the addition of "or the bearer"). Other cheques payable in this Kingdom shall be presented for payment at the latest on the tenth day after the day of issue, or, if more time than five days is required for sending of the cheque in the ordinary manner from the place of issue to the place of payment, at the latest on the fifth day after the expiration of the time necessary for such sending. If the place of issue is not indicated in the cheque, it is considered as having been issued at the place of payment. If in a cheque issued payable to a person who is mentioned (with or without the addition of "or bearer"), there is found with his name an indication of place, he is deemed to live at the place indicated.

If the period above indicated expires on a Sunday or some other ordinary holiday, presentment may take place with valid effect on the succeeding business

*To § 8.* The rule here laid down, which is explained not only by the desire to counteract the use of cheques as instruments of credit, but also by the fear of encroaching on the privileges of bank notes by the recognition of accepted cheques issued to bearer, it should be well noted, only applies to cheques. When we have before us a deviation from the provisions of § 1 concerning the form of cheques, the acceptance of a mandate is valid according to the ordinary rules. — Nothing prevents a cheque from being provided with a declaration of the drawee indicating that cover is available, and such a notification does not make the cheque subject to stamp duty. — It results from the rule contained in § 8 that there can be no question of presentment for acceptance or recourse for non-acceptance or for insecurity of acceptance.

<sup>1)</sup> As Danish-Norwegian Law (in contrast to Swedish), in the case of making protest, does not absolutely require the co-operation of the public authority, but on certain conditions permits that protest may be made by two witnesses (Danish Act of 28 May 1880, § 10 and Norwegian Act of 17 June 1880, § 10), it was necessary in order to bring about a real uniformity between the aforesaid provisions, in the Swedish Act to admit as valid the "declaration signed by two irreproachable witnesses".

kan Forevisningen gyldig ske den næste Sog-nedag. Reglen i Vexellovens § 92 finder tilsvarende Anvendelse.

Tiden for Forevisning af en Check, der er betalbar i Udlandet, bestemmes efter de paa Betalingsstedet gældende Regler.

11. Den Frist af *sex Maaneder eller et Aar*, i hvilken Checkeierens Regresfordring forældes (*Vexellovens § 78*), regnes fra Checkens Udstedelsesdag.

12. Er Regresfordringen forældet, eller er den til dens Bevaring foreskrevne Omgang forsomt, finder Bestemmelsen i Vexellovens § 93 tilsvarende Anvendelse. Naar ikke andet gøres antageligt, anses Udstederen beriget paa Checkeierens Bekostning med den Sum, Checken lod paa.

(Dansk.)

13. Er en Check bortkommen, kan den, hvad enten den lyder paa Navn eller paa Ihænde-haveren, blive mortificeret overensstemmende med de om Mortifikation af Gælds-breve i Almindelighed gæl-dende Regler.

(Dansk-Norsk.)

14. Bestemmelserne i Vexellovens §§ 84 til 86 om Forholdet til udenlandsk Lov skulle finde tilsvarende Anvendelse i Hen-seende til Checks; dog bliver en Pengeanvis-ning ved Anvendelsen af nærvarende Lov ogsaa at anse som en gyldig Check, naar den er affattet i Overensstemmelse med de Regler, som paa Betalingsstedet gælde for Checks.

(Dansk.)

15. I Sager, hvorunder Regreskrav efter en Check ind-tales, finde Bestemmelserne i Lov om Vexelsager og Vexel-protester af 28de Maj 1880 tilsvarende Anvendelse.

*Sager mellem handlende (jfr. Lov om Oprettelse af en So- og Handelsret i Kjøbenhavn af 19de Februar 1861 § 13 Nr. 1),*

(Norsk.)

13. Er en Check bortkom-men, kan den, hvad enten den lyder paa Navn eller paa Ihæn-dehaveren, blive mortificeret efter de om Mortifikation af Gjældsbreve i Almindelighed givne Regler; *de særskilte Be-tingelser og Forskrifter, som gjøl-der for Mortifikation af Gjælds-breve lydende paa Ihænde-have-ren, kommer ikke til Anvendelse paa Checks.*

(Norsk.)

15. I Sager, som til Regres for manglende Betaling anlæg-ges mod Udsteder eller En-dossenter af en Check, kommer Forskrifterne i Lov om Retter-gangsmaaden i Vexelsager m. v. af 17 Juni 1880 til An-vendelse.

(Svensk.)

13. Har check förkommit, må den kunna dödas på sätt om dödande af förkommen vaxel finnes stadgadt.

(Svensk.)

14. Hvad i 84, 85 och 86 §§ vexellagen är i afseende å vaxel stadgadt om förhållandet till utländsk lag skall ega motsvarande till-ämpning å check; dock vare penninge-anvis-ning giltig såsom check, der den är affattad i enlighet med de bestämmelser, som å betal-ningsorten för check gälla.

(Svensk.)

15. Hvad om rättgång i vaxelmål, så ock om verkstäl-lighet af dem i sådant mål är föreskrifvet skall ega mots-varande tillämpning i fråga om mål angående återgångs-fordran på grund af check.

ad § 13 i den norske Lov. Slutningsbestemmelsen er tilføiet under Hensyn til, at der efter norsk Lov af 6 Marts 1869 § 5 gjelder meget strenge Regler om Adgang til at erholde Be-villing til Mortifikation af Ihænde-haverdokumenter, medens de almindelige Regler efter samme Lovs § 2 om Mortifikation af andre negotiable Dokumenter ved Tillægget til Checklovens § 13 er gjort gjældende for alle Checks, selv om de lyder paa Ihænde-haveren.

Til § 15 (svensk). Se K. F. om nya vexellagens införande och hvad i afseende derå iakt-tagas skall den 7 Maj 1880 § 5.

uppvisandet ske å nästa söckendag. Hvad i 92 § vexellagen är om vaxel stadgadt skall ega motsvarande tillämpning å check.

Om tid för uppvisandet af utomlands betalbar check gälle hvad å betalningsorten är föreskrifvet.

11. Den tid, inom hvilken checkinne-hafvares återgångsfordran preskriberas, räk-nas från den dag, då checken är utstald.

12. Är återgångsfordran preskriberad, eller har den på checken grundade rätt gått förlorad genom försummelse att företaga nå-gon för dess bevarande föreskrifven handling, skall hvad i 93 § vexellagen är i fråga om vaxel stadgadt ega tillämpning å check; dock att, i saknad af utredning om annat förhållande, utställaren anses till fordringsegarens skada göra vinst, motsvarande checkens belopp, der fordringen förfaller.



day. The rule of § 92 of the Bills of Exchange Act shall apply to cheques in a corresponding manner.

The time for presentment of a cheque which is payable abroad, is fixed according to the rules obtaining at the place of payment.

(Danish-Norwegian.)

(Swedish.)

**11.** The period of six months or a year within which the right of recourse of the holder of a cheque is prescribed (§ 78 of the Bills of Exchange Act), is calculated from the day of issue of the cheque.

**11.** The time within which the right of recourse of the holder of a cheque is prescribed, runs from the day on which the cheque has been issued.

**12.** If a right of recourse is prescribed, or if the right based on a cheque has been lost owing to the omission of any proceeding necessary for its preservation, the provisions of § 93 of the Bills of Exchange Act shall apply to cheques in a corresponding manner. If nothing to the contrary is probable, the drawer is considered as enriched at the expense of the holder of the cheque by the amount of the cheque in question.

(Danish.)

(Norwegian.)

(Swedish.)

**13.** If a cheque has been lost, it may, whether it has been issued nominatively or to the bearer, be annulled according to the rules generally applicable to annulment of notes of hand.

**13.** If a cheque has been lost, it may, whether it has been issued nominatively or to the bearer, be annulled according to the rules generally applicable to annulment of notes of hand; the special conditions and provisions applicable to annulment of notes of hand issued payable to the bearer do not apply to cheques.

**13.** If a cheque has been lost, it may be annulled in the manner prescribed for the annulment of lost bills of exchange.

**14.** The provisions of §§ 84—86 of the Bills of Exchange Act concerning the operation of foreign laws shall find a corresponding application in regard to cheques. An order for payment in cash, however, in so far as the application of the present Act is considered, shall also be considered as a valid cheque when it is worded in accordance with the rules which at the place of payment apply to cheques.

(Danish.)

(Norwegian.)

(Swedish.)

**15.** In actions brought to enforce the right of recourse in respect of a cheque, the provisions of the Act concerning lawsuits and protests of bills of exchange of 28th May 1880 apply in a corresponding manner.

**15.** The provisions of the Act concerning the procedure in bills of exchange actions, etc. of 17 June 1880 apply to actions brought to enforce the right of recourse for non-payment against the issuer or indorsers of a cheque.

**15.** The provisions concerning bills of exchange actions and the execution of judgments in such actions shall in a corresponding manner apply to actions brought to enforce the right of recourse based on a cheque.

Lawsuits between traders (compare § 13 No. 1 of the Act of 19 February 1861 regarding the establishment of a

*To § 13 of the Norwegian Act.* The final clause has been added owing to the circumstance that according to the Norwegian Act of 6 March 1869, § 5, very rigorous rules obtain with regard to the authorisation to annul documents issued payable to bearer, whereas the ordinary rules according to § 2 of the same Act concerning the annulment of other negotiable documents, by the supplement to § 13 of the Cheques Act have been made applicable to all cheques even if they have been issued payable to bearer.

*To § 15 (Swedish).* See the Royal Ordinance of 7th May 1880, § 5, with regard to the introduction of the new Bills of Exchange Act, and that which shall be observed in respect thereof.

*hvorunder Fordringsrettigheder, som ere hjemlede ved foranstaaende Bestemmelser, gjøres gjældende, ere Handelssager.*

16. Imod den, der har udstedt eller endosseret en ved Sigt betalbar Pengeanvisning, som er affattet i anden Form end den, som i nærværende Lov og i Vexellov af 7de Maj 1880 er foreskrevet henholdsvis for Checks og for Vexler, kan Regres paa Grund af manglende Betaling, hvor saadan Regres maatte være hjemlet<sup>1)</sup>, dog kun gøres gjældende under de Betingelser, som i foranstaaende §§ 9 og 10 ere foreskrevne i Henseende til Checks; saadan Regresfordring forældes derhos efter de samme Regler, som gælde for Regresfordring efter en Check, ligesom Reglerne i § 12 finde tilsvarende Anvendelse<sup>2)</sup>.

17. Checks og Endossementer, der tegnes paa saadanne, ere stempelfri. Det samme gælder om andre ved Sigt betalbare Pengeanvisninger, der ikke indeholde Benævnelse af Vexel, og paa hvilke der ikke er tegnet Acept.

Den, som udgiver eller modtager en Check eller anden ved Sigt betalbar Anvisning forinden den deri angivne Udstedelsesdag, eller som udgiver eller modtager en saadan Anvisning, i hvilken Udstedelsesdag ikke er angiven, anses, saafremt Dokumentet ikke er stemplet efter Taksten for lange Vexler, med en Bøde lig det 10-dobbelte af denne Takst, dog ikke under 10 Kr., hvorhos

*ad dansk § 16.* <sup>1)</sup> Loven overlader det altsaa til Afgørelse efter almindelige Regler og Sædvaner, hvorvidt saadan Regres maatte være hjemlet. Teorien er i saa Henseende tilbojelig til at opstille som Regel, at der ved Sigtanvisningers Udgivelse begrundes Regresret mod Udstederen, at denne er at anse som en Gældsbrevsfordring, og at ligeledes Endossenterne af saadanne Anvisninger hæfte som Gældsbrevskyldnere. — <sup>2)</sup> Men i øvrigt gælde de særlige for Checks givne Regler ikke for saadanne almindelige Pengeanvisninger og altsaa bl. a. heller ikke Vexelproceslovens Regler. For Norges Vedkommende ansaaes det ikke paakrævet at træffe Bestemmelser som i den danske Lovs § 16 om Regresretten efter andre ved Sigt betalbare Pengeanvisninger end Checks, idet saadanne Anvisninger antoges efter Checklovens Ikrafttræden kun undtagelsesvis at ville forekomme. Havde man ved Anvisningens Udstedelse undladt at befølge denne Lovs Formalforskrifter, fandtes den ældre Sædvanerets Regler med Hensyn til Adgang til Regres fremdeles at burde være gjældende. Efter disse antages saadan Regresret at tilkomme Assignataren, naar intet Modbevis kan hentes fra det underliggende Forhold, og ei de særlige Udtryk i Anvisningen taler derimod; særlig har det været fremhævet, at Regresretten maatte være tilstede, naar der i Anvisningen findes Erkendelse fra Assignanten om, at Valuta var annammet. Ogsaa Anvisningens Udstedelse til Assignataren „eller Ordre“ antages at begrunde Regresret. Denne har i Norge været antaget at kunne gøres gjældende af enhver godtroende Modtager af Anvisningen, jfr. Aubert: Den norske Obligationsrets specielle Del, 1ste Bind, 2den Udg. (Christiania 1901), S. 561 o. flg. Omtrent samme Grunde antages at have bevirket, at § 16 ikke heller er medtaget i den svenske Lov. (Jvf. i øvrigt Anm. til den svenske Vexellovs § 5).

*ad § 17.* Heller ikke i Norge er der Stempelplicht med Hensyn til Checks.

I Sverige gælder om *stampelafgift och protestkostnader* för checks hvad ofvansagts om *vexel* (se s. 35).

Maritime and Commercial Tribunal in Copenhagen) brought in relation to claims based on rights which are authorized by the preceding provisions, are commercial causes.

16. No recourse for non-payment shall be had against any person who has issued or indorsed an order for payment in cash payable at sight, if

16. This Act will come into force on the 1st January next year.

such order is worded in a manner different from the provisions of the present Act and from those of the Bills of Exchange Act of 27th May 1880, in regard respectively to cheques and bills of exchange, even when such recourse might be justified<sup>1)</sup>, excepting only on the conditions prescribed with regard to cheques in the preceding §§ 9 and 10; such a claim of recourse consequently becomes prescribed according to the same rules as apply to a claim of recourse in the case of a cheque, and the rules of § 12 apply in a corresponding manner<sup>2)</sup>.

17. Cheques and indorsements written on cheques are free of stamp duty. The same applies to all other orders for payment in cash payable at sight which do not contain the designation bill of exchange, and on which no acceptance is written.

A person who gives out or receives a cheque or other order payable at sight before the day of issue indicated in the cheque, or who gives out or receives such an order in which the day of issue is not indicated, is, if the document in question is not stamped according to the tariff for long term bills, subject to a penalty equal to ten times the amount of the tariff duty, with a minimum of ten kroner, and

*To Danish Act § 16.* <sup>1)</sup> The Act consequently leaves it to be decided according to general rules and customs whether such recourse may be justified. The theory in this respect is inclined to lay down as a rule that by issuing orders payable at sight a right of recourse arises against the issuer, that this is to be considered as a claim on a note of hand, and that also indorsers of such orders are liable as debtors on notes of hand. — <sup>2)</sup> But in general the rules specially given for cheques do not apply to such ordinary orders for payment of cash, and consequently, in particular, not the rules of the procedure in bills of exchange causes. In the case of *Norway* it was not considered necessary to lay down rules on a par with § 16 of the Danish Act concerning the right of recourse in respect of orders for payment of cash payable at sight other than cheques, because such orders, on the Cheques Act coming into force, were supposed to be of only exceptional occurrence. If on issuing an order it had been omitted to follow the provisions in regard to formalities contained in this Act, it was found that the rules of the older law in accordance with custom in regard to the right of recourse still ought to apply. According to these rules the right of recourse is supposed to be due to the assignee when no contrary intention can be inferred from the transaction in question, and the special terms of the order do not mention anything to the contrary; it has notably been pointed out that the right of recourse must obtain when there is a recognition in the order on the part of the assignor that the value had been received. Also the issue of the order to the assignee "or order" is supposed to give a right of recourse, which in Norway it has been considered may be advanced by any bona fide transferee of the order (compare Aubert: The special part of the Norwegian Law of Obligations, 1st volume, 2nd edition (Christiania 1901), p. 561 et seq.) It is supposed that § 16 has not been adopted in the *Swedish Act* for the same reasons. (Compare generally note on § 5 of the Swedish Bills of Exchange Act).

*To § 17.* Nor is stamp duty in regard to cheques applicable in *Norway*. That which has been said above with regard to bills of exchange in Sweden applies to stamp duty and costs of protest of cheques.

Dokumentet bliver at forsyne med det for de nævnte Vexler foreskrevne Stempel.

18. Denne Lov træder i Kraft den 1ste Januar 1898.

Fra samme Dag bortfalde Bestemmelserne i 2det og 3dje Stykke af § 3 i Lov angaaende Begunstigelser i Henseende til Brugen af stemplet Papir af 11te Februar 1863.

Hvorefter alle vedkommende sig have at rette.

Givet paa Amalienborg, den 23 April 1897, under vor Kongelige Haand og Segl.

Christian R.  
(L. S.)

Rump.

Thi have Vi antaget og bekræftet, ligesom Vi herved antage og bekræfte denne Beslutning som Lov under Vor Haand og Rigets Segl.

Givet ombord paa Chefsskibet Drott, Marstrand den 3die August 1897.

Oscar.  
(L. S.)

G. Gram.

Lehmann.

Denna lag träder i kraft den 1 Januari 1899.

Det alla, som vederbör, hafva sig hörsamligen att efterrätta. Till yttermera visso hafve Vi detta med egen hand underskrifvit och med Vårt Kongl. sigill bekräfta lätit.

Stockholms slott  
den 24 Mars 1898.

Oscar.  
(L. S.)

L. Annerstedt.

the document shall be provided with the stamp prescribed for the aforesaid bills of exchange.

18. This Act comes into force on the 1st January 1898.

The provisions of the 2nd and 3rd paragraphs of § 3 of the Act concerning privileges in regard to the use of stamped paper of the 11th February 1863 shall be repealed from the same day.

All persons concerned shall act accordingly.

Given at Amalienborg on the 23rd April 1897, under Our Royal Hand and Seal.

Christian R.  
(L. S.)

Rump.

We have consequently passed and sanctioned, and We herewith pass and sanction this resolution as law under Our Hand and the Seal of the Kingdom.

Given on board the flag-ship Drott, Marstrand, on the 3rd August 1897.

Oscar.  
(L. S.)

G. Gram.

Lehman.

This Act comes into force on the 1st January 1899.

All persons concerned shall in obedience act accordingly. In testimony of which We have also signed this by Our own hand and let it be confirmed with Our Royal Seal.

Stockholm Castle  
the 24th March 1898.

Oscar.  
(L. S.)

L. Annerstedt.



## II

# **DANMARKS, MARITIME LAW NORGES OG SVERIGES OF DENMARK. NORWAY SØRET AND SWEDEN**

BEARBEIDET

COMPILED

AF

BY

**EDWARD HAMBRO**

**EDWARD HAMBRO**

KONST. HOIESTERETS-ASSESSOR, CHRISTIANIA

MEMBER OF THE SUPREME COURT, CHRISTIANIA

TRANSLATED (except where official translations are used)

BY

**JOHN DORUM, B. A.**

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# Nordisk Søret.

## Indledning.

1. Kilder. De skandinaviske nationale Retskilder i Middelalderen, skjønt ikke uden søretslige Bestemmelser<sup>1)</sup>, tildels endog af temmelig hoi Alder, har dog ikke havt nogen Betydning for den videre Udvikling af den skandinaviske Søret. Nutidens skandinaviske Søret hviler derimod paa det fælleseuropæiske Grundlag, den almindelige Sædvaneret, som havde fundet sit Udtryk bl. a. i „*consolato del mare*“ og i de for de vestlige og nordlige Lande endnu meget vigtigere „*juge-ments*“ eller „*rooles d'Oléron*“; disse sidste blev gjennem „Vonnese von Damme“ Kilden for den hanseatiske Søret og gjennem denne igjen Kilde for den skandinaviske<sup>2)</sup>.

Den første almindelige skandinaviske Søret blev nemlig taget fra Hanseaterne. Paa Foranledning af Forhandlingerne paa en „Hansedag“ 1407 i Lübeck angaaende Afgivelserne i Henseende til Gros-Havarireglerne mellem „Vonnese von Damme“ og den daværende nordiske Søret, blev der i Amsterdam udarbejdet et Udkast til en Ordonnans, som omfattede hele den private Søret. Disse Bestemmelser tilligemed „Vonnese von Damme“ blev med enkelte videre Tilføielser under Navnet „Waterrecht“ ved Sædvanen reciperet i Norden, ogsaa udenfor det hanseatiske Forbund. I Aaret 1505 aftrykte den første Bogtrykker i Kjøbenhavn, Gotfried von Ghemen, et Haandskrift af denne Retssamling med Tilføielse af 14 Lübeckerartikler; det benyttede Haandskrift har formodentlig været det, som brugtes ved Soretten i Staden Wisby paa Gottland, og efter denne Kjøbenhavnerudgave<sup>3)</sup> har „Waterrechten“ faaet Navnet „den Gottlandske“ eller „den Wisbyske“, endskjønt den intet har at gjøre med Gottland eller Wisby.

Fra denne Tid af skiller den skandinaviske Sorets Kilder sig og maa særlig angives for hvert af Landene, indtil de sluttelig atter har nærmet sig hverandre i de sidste Soløve.

## Danmark.

Under Kong Frederik II fik Danmark sin første Sofartslov af 9 Maj 1561, hvis Kilder væsentlig er at søge i den Gottlandske Waterrecht<sup>4)</sup> tilligemed i hanseatisk og hollandsk Ret og formodentlig delvis ogsaa i tidligere dansk Ret og dansk Retspraxis. Denne Lov blev afløst af Kong Christian den Vtes Landslov af 1683, 4de Bog. Den nye Lov var hovedsagelig bygget paa den tidligere Lov af 1561, men dog tillige betydelig paavirket af den svenske Lov af 1667. Den 4de Bog af Landsloven af 1683 var den danske Sorets Hovedlov lige til Loven af 1 April 1892, dog med talrige Forandringer og Tillæg<sup>5)</sup>.

<sup>1)</sup> I Danmark enkelte slesvigske Stadsretter: Byen Slesvigs Stadsret skriver sig omtrent fra Aar 1200. — Angaaende Norge se Indledningsafsnittet til den norske Handelsret og det der oplyste om de ældste nationale Kilder til denne og Soretten. I Sverige „Bjarköarrätten“, en Stadsret for Stockholm fra den sidste Halvdel af det 13de Aarhundrede og Kilde til Kong Magnus Erikssons „Stadslag“ fra ca. 1350; i denne var en særskilt Bog („Balk“), „Skipmala balkar“ viet Soretten. — <sup>2)</sup> Sml. i det hele Platou, O.: Forelæsninger over norsk Søret. Christiania 1900, S. 6 o. flg. — <sup>3)</sup> Slutningen af Aftrykket lyder saaledes: „Ilyr eyndet dat gotlandsche waterrecht dat de gemeyne Kopman unde schippers geordinert unde ghemaket hebben to Wisby, dat sich alle man Ilyr na richten mach.“ Det bedste Aftryk findes nu i Schlyters store *Corpus juris Suegothorum antiqui*, Bd. VIII. — <sup>4)</sup> dog i ringere Omfang end tidligere antaget; større Indflydelse har en hanseatisk Recess af 1530 og en Lübecker Ordinance af 1551 havt. — <sup>5)</sup> Blandt disse Forordning af 28 Decbr. 1792 om Skibsbesætningens Fortrinsret for dens Krav paa Rederen, Forordning af 28 Decbr. 1832 om Stranding, Lov af 23 Febr. 1866 om Disciplin i Handelsskibe tilligemed to Love af 13 Marts 1867 om Skibes Maaling og Registrering.



# Scandinavian Maritime Law.

## Introduction.

1. **Sources.** The national sources of Scandinavian law of the Middle Ages, although not devoid of provisions<sup>1)</sup> in regard to maritime law, of which some were even of great antiquity, have had no important influence on the subsequent development of Scandinavian maritime law. On the contrary, the Scandinavian maritime law of the present time rests on an inter-European basis, the general law of custom, which for example had found its expression in the "*consolato del mare*" and, which were even much more important for the Western and Northern countries, in the "*jugements*" or "*rooles d'Oléron*"; the latter through the "Vonnese von Damme" became the source of the Hanseatic maritime law and through this again the source of the Scandinavian<sup>2)</sup> maritime law.

The first general Scandinavian Maritime Law was, in fact, derived from the Hanseatic League. Occasioned by the deliberations of the "Diet of the Hanse" at Lübeck in 1407 concerning the differences existing in regard to the rules of general average between the "Vonnese von Damme" and the then Scandinavian maritime law, the project of an Ordinance comprising the whole private maritime law was drafted at Amsterdam. These provisions, as well as the "Vonnese von Damme", with some further additions, were received as customary law under the name of the "Waterrecht" in the Northern countries, including those outside the Hanseatic League. In the year 1505 the first printer in Copenhagen, Gottfried von Ghemen, printed a manuscript of this collection of laws with the addition of 14 Articles originating from Lübeck; the manuscript which was made use of was probably that which was used at the Maritime Tribunal of the town of Wisby in Gothland, and from this edition of Copenhagen<sup>3)</sup> the "Waterrecht" has acquired the name of the law of "Gothland" or of "Wisby", although it has nothing to do with Gothland or Wisby.

From this time the sources of the Scandinavian maritime law became divided into branches, and must be separately indicated in regard to each of the countries, until they again finally approached each other in the recent Maritime Laws.

## D e n m a r k.

Under King Frederick II Denmark obtained her first Maritime Law of 9th May 1561, the sources of which in the main must be sought in the Waterrecht<sup>4)</sup> of Gothland and in Hanseatic and Dutch law, and presumably in part also in ancient Danish law and Danish legal practice. This Law was replaced by King Christian the V's National Law of 1683, 4th Book. The new Law was mainly based on the previous Law of 1561, but was also considerably influenced by the Swedish Law of 1667. The fourth Book of the National Law of 1683 remained the principal Danish Maritime Law until the Law of 1st April 1892 was enacted, subject however to numerous modifications and additions<sup>5)</sup>.

1) In *Denmark* some municipal laws of Schleswig; the municipal law of the town of Schleswig was originated about the year 1200. — As to *Norway*, see the introductory section of the Norwegian Commercial Law and the information there given as to the most ancient national sources thereof and of the maritime law. In *Sweden* the "Bjarköarät", a municipal law of Stockholm dating from the latter half of the 13th century, and being the source of King Magnus Eriksson's "Municipal Law" of about 1350; in this a special Book ("Balk"), "Skipnala balker" was devoted to maritime law. — 2) Cf. in general *Platou, O.*: Lectures on Norwegian maritime law. Christiania 1900, p. 6 et seq. — 3) The end of the printed manuscript reads as follows: "Hyr eyndet dat gotlandsche waterrecht dat de gemeyne Kopman unde schippers geordinert unde ghemaket hebben to Wisby, dat sich alle man hyr na richten mach". The best edition is now to be found in *Slyter's large Corpus juris Sueogothorum antiqui*, Volume VIII. — 4) To a lesser extent, however, than previously supposed; a Hanseatic Statute of 1530 and an Ordinance of Lübeck of 1551 have had a greater influence. — 5) Amongst these the Ordinance of 28th Dec. 1792 concerning the maritime lien of the crew for their claims on the shipowner, the Ordinance of 28th Dec. 1832 concerning stranding, the Law of 23rd Feb. 1866 concerning the discipline on board merchant ships, together with two Laws of 13th March 1867 concerning the measurement and registration of ships.

## Norge.

Kong Frederik II's Solov af 1561 gjaldt ogsaa for Norge og blev afløst af 4de Bog af Kong Christian den Vtes norske Landslov af 1687; denne Landslovs Soret falder ganske sammen med den danske Landslovs. Efter Forarbejder, som strakte sig helt tilbage til Aaret 1845, fik Norge en ny Solov af 24 Marts 1860, som med den tidligere paa Landsloven beroende Soret som Udgangspunkt har hentet forskellige Bestemmelser fra engelsk og fransk Soret.

## Sverige.

Den „Gottlandsche Waterrecht“ blev her erstattet med Kong Karl den XItes Solov af 12 Juni 1667, som især synes at være paavirket af hollandsk Ret. Denne Lov forblev gjeldende med enkelte Ændringer og Tillæg<sup>1)</sup> indtil Loven af 23 Februar 1864, som havde sine væsentligste Forbilleder i den norske Lov af 1860 og i Særdeleshed i den dengang allerede ndkomne tyske Solov.

## De nugjeldende Solove.

Til Forberedelse af en ny Solov blev der i Danmark allerede i Aaret 1870 nedsat en Kommission, som i 1880 afgav sit Udkast til en ny Solov. I Sverige og Norge var man netop paa den Tid optaget med at forberede en Revision af de sidste Solove af 1864 og 1860; men disse uden indbyrdes Sammenhæng staaende Forberedelser blev indstillet, efterat den svenske og den norske Regjering paa Forslag af og sammen med den danske havde nedsat en fælles skandinavisk Solovskommission, bestaaende af Medlemmer fra alle tre Lande, med den Opgave at istandbringe Udkast til en fælles Solov for de tre Lande. I Aaret 1887 afgav Kommissionen et i det Væsentlige fælles Udkast. Det svenske Udkast maatte overensstemmende med Landets Forfatning først undergives den svenske Høiesterets Prøvelse, som fandt Sted i Aaret 1889. Et engere Udvalg af Lovkommissionen tog derefter, hovedsagelig paa Grund af de af den svenske Høiesteret gjorte Anmærkninger, Lovudkastene under Revision, og de endelige Udkast blev afgivne i Aaret 1890. Det svenske Udkast blev med faa Forandringer Lov, dateret 12 Juni 1891, det danske 1 April 1892 og det norske 20 Juli 1893.

**2. De tre skandinaviske Soloves indbyrdes Forhold.** Der er visse med Soretten nær forbundne Emner, hvori der hverken var tilsigtet at opnaa Overensstemmelse mellem de tre Landes Solove, eller hvor saadan vilde have været mulig, hovedsagelig Registreringsvæsenet, den med Soretten forbundne Strafferet og Proeesmaaden ved Soretterne. Alt dette hænger for noie sammen med hvert af Landenes øvrige Lovgivning og særlige Forhold til at kunne ordnes ved fælles Bestemmelser. Lovenes første Kapitel om Skibe tilligemed det tolvte, som indeholder Straffebestemmelser, og det trettende om Proeesmaaden, der forøvrigt alene findes i den svenske og den norske Lov, var derfor allerede fra Begyndelsen af temmelig forskellige i Lovudkastene.

En fortræffelig Oversigt over de øvrige Afvigelse i de tre Love er givet af den svenske Justitieraad (Høiesteretsassessor) I. Afzelius, som har deltaget i Lovkommissionens Arbejder, i det nordiske Tidsskrift for Retsvidenskab Bd. 6 (1893), S. 462 o. flg. Det kan af denne sees, at følgende Forskjelligheder er at anse som de vigtigste.

Den svenske Solov udelukker i § 8 Rederens Ansvar for den Skade, som er forvoldt Trediemand af Tvangslodsen og af den af Afladerne betingede eller af en offentlig Stuer, som Skipperen er forpligtet til at bruge ligesom Tvangslodsen; medens efter den danske (nedenfor: D.) og norske Lov (nedenfor: N.) Rederen bærer Ansaret ogsaa for denne Skade.

Tredie Kapitel om Skipperen og fjerde Kapitel om Mandskabet udviser temmelig talrige Afvigelser, som for Storstedelen er tilkomne under Lovudkastenes

<sup>1)</sup> F. Ex. Sørelementet af 30 Marts 1748 og Forordning af 2 Oktbr. 1750 om Forsikring og Havari.

## Norway.

King Frederick II's Maritime Law of 1561 also applied to Norway, and was superseded by the 4th Book of King Christian the V's Norwegian National Law of 1687; the maritime law of this National Law entirely coincides with that of the Danish National Law. After preparatory work going as far back as the year 1845, Norway obtained a new Maritime Law of 24th March 1860, which, starting from the ancient maritime law based on the National Law, adopted various provisions from English and French maritime law.

## Sweden.

The "Gothlandsche Waterrecht" was here replaced by King Charles XI's Maritime Law of 12th June 1667, which seems to have been influenced by Dutch Law in particular. This Law remained in force subject to some modifications and additions<sup>1)</sup> until the Law of 23rd February 1864, which had its most important precedents in the Norwegian Law of 1860 and notably also in the German Maritime Law, which then had already been published.

## The Maritime Laws actually in force.

With a view to preparing a new Maritime Law, a committee was appointed in Denmark in the year 1870, which in 1880 published its project of a new Maritime Law. At this time Sweden and Norway were busy preparing a revision of the last Maritime Laws of 1864 and 1860; but these preparations, which had no reciprocal connection, were suspended upon the appointment by the Swedish and Norwegian Governments, in pursuance of a proposal made by and in concert with the Danish Government, of an inter-Scandinavian maritime law committee consisting of members of all the three countries, with the object of drafting the project of a common Maritime Law for the three countries. In the year 1887 this committee published projects which were identical in regard to the main points. The Swedish project, in accordance with the constitution of the country, had first to be submitted to the examination of the Swedish Supreme Court, an examination which took place in 1889. A select body of the committee thereupon, mainly on the basis of the observations made by the Swedish Supreme Court, revised the projects, and the final projects were published in the year 1890. The Swedish project with few modifications became the Law, dated 12th June 1891, the Danish the Law dated 1st April 1892, and the Norwegian, the Law of 20th July 1893.

**2. The three Scandinavian Maritime Laws in their reciprocal relations.** There are certain subjects intimately connected with maritime law with regard to which it was not intended to obtain harmony between the maritime laws of the three countries, and others where this would not have been possible, mainly in matters concerning registration, the Criminal Law connected with maritime matters and the procedure before the Maritime Tribunals. All these matters are too intimately connected with the other legislation and special conditions of each of the countries to be regulated by means of provisions in common. The first Chapter of the Laws concerning ships, together with the twelfth containing penal provisions, and the thirteenth concerning the procedure which, it should be observed, is only to be found in the Swedish and Norwegian Laws, were consequently from the first different in some respects in the projects of the Laws.

An excellent exposition of the other differences of the three Laws has been made by the Swedish Counsellor of Justice (Member of the Supreme Court) I. Afzelius, who has taken part in the work of the Law Committee, an exposition which was published in the *Scandinavian Review of Jurisprudence*, Volume 6 (1893), p. 462 et seq. It may there be seen that the following differences are to be considered as the most important.

The Swedish Maritime Law in § 8 excludes the liability of the shipowner for damage caused to third persons by a compulsory pilot, or by a pilot imposed by the freighters, or by a public stower whom the shipmaster is compelled to employ like a compulsory pilot; whereas according to the Danish (below: D) and Norwegian Law (below: N) the shipowner bears the responsibility for this damage also.

The third Chapter concerning the master and the fourth Chapter concerning the crew show somewhat numerous differences, which mostly arose during the

<sup>1)</sup> For example the Maritime Regulation of 30th March 1748 and the Ordinance of 2nd Oct. 1750 concerning insurance and average.

Behandling i Nationalforsamlingerne. Disse Forskjelligheder er imidlertid i det Væsentlige kun af Interesse for de tre Landes Rederier og Konsuler og vil derfor her kunne forbigaaes.

I det femte Kapitel om Befragtning maa det bemærkes, at N. i § 111, i Mod-sætning til D. og S., negter Befragteren Erstatning for, at Skibet ikke indfinder sig til aftalt Tid paa Lasteplassen, naar Forsinkelsen alene skyldes Mandskabet, medens D. og S. paalægger Rederiet samme Ansvar i denne Henseende for Skibsmandskabet som for Skibsførerens og Rederiets egne Handlinger. Som det synes, staar denne Forandring i N. ikke i den bedste Sammenhæng med den almindelige Bestemmelse i § 8, jfr. ogsaa § 59, hvilken sidste handler om Skipperens Ansvar for den af Mandskabet forvoldte Skade. § 114 indeholder i alle tre Love afvigende Bestemmelser om Skipperens Berettigelse til at vælge Lasteplass og om hans Pligt til at bringe Skibet til den sædvanlige Lasteplass i Havnen.

Det sjette Kapitel om Bodmeri og det syvende om Havari udviser ingen væsentligere Forskjelligheder. Det kan dog nævnes, at S. i § 200 bestemmer angaaende Erstatning for Gods, som i Nodhavn sælges for fælles Regning, at hvis den beregnede Erstatning ikke naar op til den beholdne Kjøbesum med Fradrag af den bespærede Fragt, skal sidstnævnte Beløb erstattes i Havariet; efter D. og N. skal derimod den beholdne Kjøbesum udredes uden det i S. nævnte Fradrag, naar den overstiger Erstatningsbeløbet.

Heller ikke det ottende Kapitel om Skade ved Sammenstød viser saadanne; dog har D. og N. i § 223 optaget den fra engelsk Ret hidrørende Lovsformodning mod den Skipper, som efter Sammenstødet undlader at yde det andet Skib Hjælp eller ikke opgiver sit og Skibets Navn.

I niende Kapitel er alle tre Love samstemmige deri, at den under Faren med Bjergerne truffne Aftale om Bjergelønnen senere kan omstødes; kun er Fristerne for Spørgsmaalets Indbringelse for Søretten noget forskjellig fastsat.

I tiende Kapitel om Soforsikring, som kun har optaget Hovedbestemmelserne i dette Emne, og i ellefte Kapitel om Søpanteret og Forældelse af Søfordringerne forekommer kun uvæsentligere Forskjelligheder.

Uagtet de bestaaende Afvigelser, som er blevet talrigere, end det vel var nødvendigt, maa de tre skandinaviske Love i alt Væsentligt og især i alle Stykker af mere international Karakter ansees som indbyrdes overensstemmende.

**3. De skandinaviske Søloves Forhold til den tyske Ret.** Der vil i det Følgende kun blive gjort enkelte Bemærkninger om de Forskjelligheder mellem de skandinaviske Sølove og den tyske Sørret, som ved Siden af disse Loves store og overveiende Lighed falder mest i Øinene.

Der maa i denne Henseende først gøres opmærksom paa, at de skandinaviske Sølove ogsaa har tilsvarende Anvendelse paa Skibsfarten paa Indsøer, Floder og Kanaler. Dette er vistnok ikke udtalt i Lovene selv, men antages ifølge fast Retspraxis i alle tre Lande, og var heller ikke tvilsomt for de tidligere Søloves Vedkommende. Der gives derfor ingen Særlove enten i Danmark, Norge eller Sverige om denne Skibsfart. Der anvendes imidlertid her i Regelen ikke Konnossementer eller ligeartede negotiable Dokumenter, men kun paa Navn lydende Fragtbreve, Adressebreve eller Folgebrev<sup>1)</sup>. Denne Indsø-, Flod- og Kanalfart har paa Grund af de naturlige Forhold en meget større Betydning i Sverige og i Norge end i Danmark.

Efter den tyske Solov (D. H.-G.-B. § 567, 3die Led) er Bortfragteren kun i Kraft af særlig Overenskomst pligtig efter Liggedagenes Udlob til at vente endnu længere (Overliggedage). Dette er ordnet anderledes i de skandinaviske Sølove. Efter disses § 118 har Befragteren uden nogensomhelst forudgaaende Aftale Krav paa, at Skipperen efter Liggedagenes Udlob endnu i nogen Tid (Overliggedage) mod særlig Godtgjørelse holder Skibet beredt til Lastning. Overliggedagene bliver

<sup>1)</sup> Det Nærmere herom vil blive omtalt i de særskilte handelsretslige Afsnit for hvert Land under Transportkontrakterne.

deliberations on the projects of the Laws in the National Assemblies. These differences, however, are mainly of interest only to the shipowners and the consuls of the three countries and may therefore here be omitted.

In the fifth Chapter dealing with affreightment it must be observed that N. in § 111, in contrast to D. and S., refuses to allow damages to the charterer when the ship does not arrive at the stipulated time at the place of loading, when only the crew is to blame for the delay, whereas D. and S. impose on the shipowner the same responsibility in this respect with regard to both the acts or defaults of the crew and those of the master and owner. As it appears, this modification in N. is not in the best harmony with the general provision of § 8; cf. also § 59, which latter deals with the responsibility of the shipmaster for damage caused by the crew. § 114 contains varying provisions in all the three Laws regarding the right of the master to select the place of loading, and regarding his obligation to conduct his ship to the usual place of loading in the port.

The sixth Chapter on bottomry and the seventh on average do not show any essential differences. It may, however, be observed that S. in Art. 200 provides, regarding compensation for goods which are sold for a common account at a port of distress, that if the calculated compensation is lower than the amount of the net proceeds of the sale less the freight saved, the latter amount shall be made good in general average; according to D. and N., on the other hand, the net proceeds of the sale are to be paid without the deduction mentioned in S. being made, when it exceeds the amount of the compensation.

Nor does the eighth Chapter on damage caused by collision show any essential differences; D. and N. have however in § 233 adopted the legal presumption borrowed from English law against the master who, after a collision has taken place, neglects to render assistance to the other ship or does not give his name and that of his ship.

In the ninth Chapter the three Laws uniformly enact that an agreement entered into with the salvors during the peril, concerning the amount of the salvage, may subsequently be annulled; the periods within which a dispute may be taken before a Maritime Tribunal have, however, been somewhat differently fixed.

In the tenth Chapter on marine insurance, which has only adopted the general principles on this subject, and in the eleventh Chapter on maritime liens and the limitations of time for enforcing maritime claims, only differences of minor importance are to be found.

Although the existing differences are certainly more numerous than it was necessary to make them, the three Scandinavian Laws must be considered as reciprocally harmonious on all essential points, and particularly in regard to all points of a more international character.

**3. The Scandinavian Maritime Laws in their relation to German law.** In that which follows a few remarks will only be made as to the differences existing between the Scandinavian Maritime Laws and the German maritime law, which by the side of the great and overwhelming similarity of these Laws are most conspicuous.

In this respect attention must in the first place be called to the circumstance that the Scandinavian Maritime Laws apply also in a corresponding manner to navigation on lakes, rivers and canals. This is certainly not expressed in the Laws themselves, but is admitted according to recognized legal practice in all three countries, nor was there any doubt on this point in so far as previous Maritime Laws were concerned. There are consequently no separate laws, either in Denmark, Norway or Sweden, concerning this kind of navigation. Here, however, bills of lading or similar negotiable documents are as a rule not used, but only freight notes, way bills or consignment notes issued nominatively<sup>1</sup>). This navigation carried on on lakes, rivers and canals, owing to the natural conditions of the three countries, is of much greater importance in Sweden and Norway than in Denmark.

According to the German maritime law (German Commercial Code, § 567, 3rd Paragraph), the shipowner (master) is only bound in virtue of special agreement to wait still longer (days on demurrage) on the expiration of the lay days. This is differently regulated in the Scandinavian Maritime Laws. According to § 118 of these Laws the charterer, without any previous agreement whatever, may claim that the master shall after the expiration of the lay days keep his ship prepared for

<sup>1</sup>) The particulars as to this subject will be mentioned in the special sections dealing with the commercial laws of each country in regard to contracts of transport.

saaledes betragtet som en Del af den samlede Lastetid, kun med den Forskjel, at der her skyldes en særlig Godtgjørelse. Overliggedagene fastsættes i § 120 i Mangel af nogen afvigende Aftale til Halvdelen af Liggedagene og beregnes i løbende Dage, medens de egentlige Liggedage ikke løber paa Son- og Helligdage etc. (§ 119, 3die Led). Godtgjørelsens Størrelse er i Lovene (§ 120) fastsat for Seilskibe til 30 og for Dampskibe til 40 Ore pr. Registerton efter Nettodrægtighed.

I det vanskelige Spørgsmaal om flere Konnossementsindehaveres Konkurrencer er i de skandinaviske Solove en ny Idee kommet tilsyne. Afladeren kan (§ 134) forlange af Skipperen, at de forskjellige Konnossementsexemplarer (som forøvrigt efter de nordiske Love [§ 133, 2det Led] skal være ligelydende, ikke blot som efter D. H.-G.-B. § 642, 2det Led, have samme Indhold) i selve Texten betegnes som første, andet, tredje o. s. v. Melder der sig nu ved Bestemmelsesstedet flere Konnossementsindehavere, har Skipperen efter Hovedregelen (§ 140) at negte Godsets Udlevering, saafremt de ikke bliver enige indbyrdes, og at oplægge det under sikker Forvaring (jfr. ogsaa en lignende Regel i D. H.-G.-B. § 646). Denne Hovedregel har imidlertid ingen Anvendelse, naar de forskjellige Konnossementsexemplarer er forsynede med Nummere paa den ovenfor omtalte Maade; da har Skipperen at udlevere Godset til den af disse, hvis Exemplar viser det laveste Nummer. Denne Nummerering af Konnossementsexemplarerne medfører ogsaa den Virkning, at udenfor Bestemmelsesstedet, hvor Skipperen efter Hovedregelen (jfr. ogsaa D. H.-G.-B. § 659, 2det Led) alene pligter at udlevere Godset, naar samtlige Exemplarer tilbageleveres ham, alligevel saadan Udlevering kan kræves af rette Ihænde-haver af det Exemplar, som er betegnet som det første; efter Forlydende er denne Nummerering overhovedet endnu lidet ibrug.

Bodmeri er i de skandinaviske Solove gjort til en Formalkontrakt lig Vexelen; der maa (§ 177) om Bodmeriet udfærdiges skriftligt Dokument, Bodmeribrev, og Lovens Fordringer med Hensyn til Brevets Indhold er udtrykkelig sat som nødvendige Betingelser for Dokumentets Gyldighed som Bodmeribrev (sml. derimod D. H.-G.-B. § 683: Bodmerigiveren kan forlange, at Bodmeribrevet indeholder etc.).

I Definitionen af den Skade, som gaar ind under Groshavari, har de skandinaviske Solove (§ 187) ikke medtaget, at den forsætlig Skadetilføielse eller Opofrelsen skal være gjort af Skipperen eller paa dennes Befaling, sml. derimod D. H.-G.-B. § 700. En endnu langt større Forskjel i Bestemmelsen af Groshavariets Væsen ligger videre deri, at de skandinaviske Solove ikke har gjort Havarifordelingen afhængig af Opofrelsens heldige Resultat; det er nok, at Formaalet med Opofrelsen har været at undgaa eller fjerne en fælles Fare, (jfr. § 192 i Mod-sætning til D. H.-G.-B. § 702).

Bestemmelserne om det største tilladelige Beløb som Bjergelon er forsaavidt afvigende fra D. H.-G.-B.s, som der i de nordiske Love (jfr. § 226, 1ste Led i Slutn.) ikke er fastsat noget absolut Maximalbeløb for Bjergelonens Størrelse (som Brøkdelen af det Bjergedes Værdi), medens Bjergelonen efter D. H.-G.-B. (§ 746, 2det Led), selv under usædvanlige Omstændigheder og Farer, aldrig kan overstige Halvdelen af Værdien; efter begge er en Trediedel under sædvanlige Omstændigheder Grænsen.

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loading for a further space on time (days on demurrage) against special compensation. In such case the days on demurrage are considered as part of the whole time for loading, but with the difference that special compensation must be paid. The days on demurrage are in § 120, in default of any agreement to the contrary, fixed at one half of the lay days and are to be computed as running days, whereas the lay days properly so called do not run on Sundays and holidays, etc. (§ 119, 3rd paragraph). The amount of the compensation (demurrage) is fixed in the Laws (§ 120) in so far as sailing vessels are concerned at 30, and in regard to steam ships at 40 öre for each registered ton of the net tonnage.

In the difficult question as to the competition of several holders of a bill of lading a new idea appears in the Scandinavian Maritime Laws. The shipper may (§ 134) demand of the shipmaster that the various copies of a bill of lading (which according to the Scandinavian Laws [§ 133, 2nd paragraph] must be similar, not only as in the case of the German Commercial Code § 642, 2nd paragraph, have the same contents) shall be numbered in the wording itself as first, second, third, etc. If while at the place of destination several holders of copies of a bill of lading present themselves, the master according to the principal rule (§ 140) must refuse delivery of the goods, unless the parties agree between themselves, and store them in safe keeping (cf. also a similar rule in the German Commercial Code § 46). This main rule, however, does not apply when the different copies of a bill of lading are provided with numbers in the manner above described; the master in such case must deliver the goods to the holder of that copy which bears the lowest number. This numbering of the copies of a bill of lading also brings about the consequence that except at the place of destination, where the master according to the main rule (cf. also the German Commercial Code, § 659, 2nd paragraph) is only bound to deliver the goods when all the copies are returned to him, such delivery may nevertheless be demanded by the rightful holder of the copy which is described as the first; it appears that this numbering is not yet generally used.

Bottomry in the Scandinavian Maritime Laws has been given the character of a formal contract like a bill of exchange; when a bottomry loan is intended (§ 177) a written document must be made out, a bottomry bond, and the requirements of the Law with regard to the contents of the bond are expressly fixed as necessary conditions of the validity of the document as a bottomry bond (cf. on the contrary the German Commercial Code § 683: the lender on bottomry may demand that a bottomry bond shall contain etc.).

In the definition of the damage which is comprised in general average the Scandinavian Maritime Laws (§ 187) do not require that the voluntary damage or sacrifice shall have been inflicted or made by the master or by his order; cf. on the other hand the German Commercial Code § 700. A far greater difference as to the determination of the character of general average further consists in the circumstance that the Scandinavian Maritime Laws have not made the distribution of average dependent on the successful result of the sacrifice; it is sufficient that the object of the sacrifice has been to avoid or remove a common danger (cf. § 192 in contrast to the German Commercial Code § 702).

The provisions as to the maximum amount permissible for salvage are so far different from those of the G. C. C., that in the Scandinavian Laws (§ 226, 1st paragraph, at the end) no absolute maximum has been fixed for the amount of salvage (as a proportion of the value of the objects saved), whereas the amount of salvage according to the G. C. C. (§ 746, 2nd paragraph), even in unusual circumstances and dangers, can never exceed half the value; according to both, one third is the limit under ordinary circumstances.

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Sølov.	Lov om Søfarten.	Sjölag.
Vi Christian den Niende, af Guds Naade Konge til Danmark etc. etc.	Vi Oscar, af Guds Naade Konge til Norge og Sverige, de Gothers og Venders,	Vi Oscar, med Guds Nåde, Sveriges, Norges, Götes och Vendes Konung,
Gøre vitterligt:	Gjøre vitterligt:	Göre veterligt:
Rigsdagen har vedtaget og Vi ved Vort Samtykke stadfæstet følgende Lov:	At Os er bleven forelagt det nu forsamlede ordentlige Storthings Beslutning af Htte Juli dette Aar, saalydende:	Att Vi, med Riksdagen, funnit godt att, med upphäfvande af Sjölagen den 23 Februari 1864 tillika med alla de särskilda stadganden, hvilka utgöra förklaring eller ändring af hvad nämnda lag innehåller eller tillägg deri, i nåder förordna som följer:

I de følgende Noter betyder D. den danske, N. den norske og S. den svenske Solov.



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## Maritime Law<sup>1)</sup>.

We, Christian the Ninth, by the Grace of God King of Denmark etc.

Make known:

The Rigsdag has passed and We by Our consent have confirmed the following Law:

## Law concerning Navigation at Sea<sup>1)</sup>.

We, Oscar, by the Grace of God, King of Norway and Sweden, the Goths and the Wends,

Make known:

That the regular Storting now assembled has submitted to Us its resolution of 11th July this year, which reads as follows:

## Maritime Law<sup>1)</sup>.

We, Oscar, by the Grace of God, King of Sweden, Norway, the Goths and the Wends,

Make known:

That We, in concert with the Riksdag, have found good, on the repeal of the Maritime Law of 23 February 1864 together with the special provisions explaining, modifying or supplementing it, graciously to order as follows:

<sup>1)</sup> As regards the text of these Laws, except in the case of the modifications made by Danish Laws of Dec. 10th 1896, Dec. 14th 1903, and April 6th 1906, and a Norwegian Law of Sep. 18th 1909, official translations have been used by permission of the respective Governments. — In the following notes D. signifies the Danish, N. the Norwegian and S. the Swedish Maritime Law.

## Første Kapitel.

## Om Skibe.

§ 1. For at et Skib kan sejle under dansk Flag, maa det enten mindst for to Tredjedele ejes af Personer, som have Indfødsret og ikke ere blevne Statsborgere i fremmed Stat, eller som ere og i mindst fem Aar have været bosiddende i den danske Stat, eller tilhøre Aktieselskab, hvis Bestyrelse har sit Sæde i den danske Stat og bestaar af Aktieejere, som fyldestgøre de nævnte Betingelser.

2. Over alle her i Riget hjemmehørende Skibe, som have en Drægtighed af 20 Registerton eller derover, fores offentlig Register. Undtagne fra Registrering ere Orlogsskibe og andre Staten tilhørende Skibe, der ikke benyttes som Fragt- eller Handelsskibe.

Skibsregistret skal for hvert Skib indeholde alt, som udfordres til Bestemmelse af dets Identitet, samt fuldstændige Oplysninger om dets Ejendoms- og Rederi-Forhold. Om Optagelsen i Registret udstedes et med samme overensstemmende Dokument (Certifikat), der følger Skibet som Nationalitetsbevis.

Om Skibsregistrets Indretning og Indhold, Fremgangsmaaden ved Indregistrering, Forpligtelsen til at gøre Anmeldelse til Registret m. v. gives nærmere Bestemmelser i særlig Lov.

## Første Kapitel.

## Om Skibe.

§ 1. Et Skib er norsk, naar det udelukkende eies af norske Statsborgere.

Tilhører Skibet et Aktieselskab, er det norsk, naar Selskabets Hovedkontor og Bestyrelsens Sæde er her i Riget, og Bestyrelsen bestaar af norske Statsborgere, der er Aktieejere. (*Lov af 11 Juni 1906.*)

2. Over norske Skibe skal der, med de Begrænsninger og efter de nærmere Regler, som ved særlig Lov bestemmes, fores offentlig Register, hvilket skal indeholde, hvad der udfordres til Bestemmelse af Skibenes Identitet, samt fuldstændige Oplysninger om deres Eiendoms- og Rederiforhold.

derom utfærdas bevis, som bør åtfølja fartyget.

Då fartyg anmäles till införande i registret, skall företes intyg, som utmärker, när, hvar och af hvem fartyget är byggt, eller, der fartyget varit i utländsk ego, visas, att utländsk egares rätt öfvergått å den, som till registret anmäles såsom egare. Vid fartygs införande i registret skall visst nummer tilldelas fartyget; och må det nummer ej sedermera ändras eller tilläggas annat fartyg. Varder fartyg, som ur registret afförts, deri å nyo upptaget, behålle det sitt förra nummer.

Göres anmälan om förändring i eganderätten till fartyg, som är i registret infördt, men finnes den, hvilken såsom egare anmäles, ej kunna i sådan egenskap inskrifvas, skall ändock i registret göras anteckning, som utvisar hans namn, det uppgifna fartygets beskaffenhet samt dagen då anmälan skett. Fartyg, som blifvit i registret infördt, må ej derur afföras i annat fall än då fartyget förolyckats, upphuggits eller annorledes förstörts, eller enligt 258 § må anses förloradt, eller efter

*ad § 1 D.* Efter Lov Nr. 10 af 4 Febr. 1898 kan Justitsministeriet tillade, at Skibe, som tilhøre et Aktieselskab, indføres i Skibsregistret, naar Flertallet af Bestyrelsens Medlemmer er bosatte i Riget. — De gældende Regler om Erhvervelse og Fortabelse af dansk Indfødsret indeholdes i Lov Nr. 42 af 19 Marts 1898, jvf. Forordningen af 15 Januar 1776. — N. Den norske Statsborgerret er nærmere bestemt ved Love af 21 April 1888, 27 Juli 1896, 29 Marts 1900 og 11. Juni 1906. — S. Den svenske Statsborgerret er nærmere bestemt ved Lov af 1 Oktbr. 1894, jvf. den kongelige Forordning af 27 Febr. 1858.

*ad §§ 2—5.* Den danske Registerlov er af 1 April 1892, den norske af 4 Mai 1901 og de tilsvarende svenske Forordninger af 18 Okt. 1901.

## Första kapitlet.

## Om fartyg.

§ 1. Fartyg skall anses såsom svenskt, när det antingen till minst två tredjedelar eges af svenska undersåtar eller ock tillhör ett aktiebolag, hvars styrelse har sitt säte här i riket och består af aktieägare, de där äro svenska undersåtar. Hufvudredare skall alltid vara svensk undersåte och bosatt här i riket. (*Lag af 27 April 1906.*)

2. Öfver alla svenska fartyg, hvilka äro afsedda att nyttjas till handelssjöfart eller resandes fortskaffande och ega en drægtighet af tjugo registerton eller derutöfver, skall föras register, innehållande för hvarje sådant fartyg de uppgifter, som pröfvas nödiga för fartygets säkra urskiljande, så ock upplysning angående eganderätten till fartyget, beskaffenheten af inskrifven egares fång samt tiden då fartyget i registret införts eller förändring i eganderätten inskrifvits; skolande, sedan fartyg i registret antecknats,

Danish Text.

Norwegian Text.

Swedish Text.

## Chapter I. Of ships.

§ 1. In order that a ship may be allowed to sail under the Danish flag it must either be owned to the extent of at least two thirds by persons who are native born Danish subjects and have not become citizens of a foreign country or who are and have been for five years at least settled within the Danish Monarchy, or belong to a joint stock company, the board of directors of which has its seat within the Danish Monarchy and consists of shareholders who fulfil the above mentioned conditions.

2. A public Register-book is to be kept of all ships of 20 tons register burden or upwards, belonging to a place within the Monarchy. Excepted from being registered are men of war and other ships belonging to the Government which are not used for the conveyance of freight or merchandise.

The Register must for each ship contain all that is requisite to determine its identity as well as full information respecting the ownership. To prove its being entered in the Register a certificate of the same tenor is issued, which accompanies the ship as a certificate of its nationality.

Respecting the form and contents of the ship-register, the mode of proceeding at the registration, the obligation to give notice to the Register etc., further instructions will be given by a special law.

## Chapter I. Ships.

§ 1. A ship is a Norwegian ship when exclusively owned by Norwegian State citizens.

A ship belonging to a joint Stock Company, Limited, is a Norwegian ship, when the Head Office of the company and the seat of its management are in this Kingdom and the managers are Norwegian State citizens and shareholders in the ship. (*Law of June 11th 1906.*)

2. Subject to the limitations and regulations which may be more particularly determined by special laws, a public Register of Norwegian ships shall be kept, containing all particulars necessary for establishing the identity of the ships, and full information in respect to their ownership and managers.

entered in the Register and such ship.

When an application for the registration of a ship is made, a certificate shall be produced showing when, where, and by whom the ship was built, or, in the event of the ship having been foreign property, it shall be proved that the right of the foreign owner has been transferred to the person who is stated on the Register as being the owner thereof. On the registration of a ship a certain number shall be allotted to the ship, and that number may not subsequently be altered or allotted to any other ship. If a ship which has been removed from the register is again entered thereon, it shall retain its previous number.

If notice is given of a change in the ownership of a ship entered on the Register, but if it is found that the alleged owner thereof cannot be entered in that capacity, an entry shall notwithstanding be made in the Register setting forth his name, the nature of his aqnest, and the date of the notice so given. Any ship entered on the Register may not be removed from the same except when the ship has been lost, or broken up, or otherwise destroyed, or according

## Chapter I. With regard to ships.

§ 1. A ship shall be considered Swedish when she is either owned to the extent of two thirds by Swedish subjects, or else is owned by a joint stock company, the board of directors of which have their registered office within the Kingdom. The directors shall consist of shareholders who are Swedish subjects. The managing director shall always be a Swedish subject living within the Kingdom. (*Law of 27th April 1906.*)

2. A Register shall be kept of all Swedish ships of 20 tons register burden or upwards intended for use in the mercantile marine or for the conveyance of passengers and shall contain for each such ship all the details which are deemed requisite for its identification, as well as reliable information respecting the ownership, the nature of the aqnest of the registered owner and the time when the ship was registered or change of ownership entered, and a certificate shall be issued to every ship when certificate shall accompany the

*To § 1 D.* According to Act No. 10 of 4th Feb. 1898 the Ministry of Justice may permit ships belonging to a joint stock company to be recorded in the Register of Ships when the majority of the members of the board of the directors are resident in the Kingdom. — The rules obtaining concerning the acquisition and loss of the Danish native right are contained in Act No. 42 of 19th March 1898, cf. the Ordinance of 15th January 1776. — N. The right of a Norwegian State citizen is in detail regulated by the Laws of 21st April 1888, 27th July 1896, 29th March 1900 and 11th June 1906. — S. The right of a Swedish State citizen is in detail regulated by the Law of 1st Oct. 1894, cf. the Royal Ordinance of 27th Feb. 1858.

*To §§ 2—5.* The Danish Registration Law was enacted on the 1st April 1892, the Norwegian on 4th May 1901 and the corresponding Swedish Ordinance on 18th Oct. 1901.

timad skada förklaras icke vara iståndsättligt, eller ock upphört att vara svenskt.

Vill egare af svenskt fartyg, som ej på grund af hvad här förut blifvit stadgadt skall vara i fartygsregistret upptaget, låta det i registret införas, vare dertill berättigad; och skall, der fartyget varder till registrering anmaldt, hvad här förut är i afseende å registreringspligtigt fartyg stadgadt ega tillämpning.

Vidare föreskrifter, huru fartygsregister skall vara inrättadt och registrering ske, meddelas af Konungen. (*Lag af 10 Maj 1901.*)

3. Retshandler om Ejendomsret og Panteret i registreringspligtigt Skib, eller i Part i saadant Skib, maa for at have Gylighed som saadanne være indtegnede paa Skibets Fohum i Skibsregistret i Overensstemmelse med de Regler, som ved særlig Lov bestemmes.

Dette gælder ikke med Hensyn til Bodmeri, heller ikke med Hensyn til nogen anden Sopan-teret efter Kapitel II eller Panteret efter § 17.

4. Skibe, der indføres i Skibsregistret, have Hjemsted i den Havn i Riget, som af Rederen bestemmes. For Skib, som ikke er registreret, gælder som Hjemsted den Havn, i hvilken Rederen bor, eller som er nærmest hans Bopæl. Er der flere Redere, er den bestyrende Reders Hjemsted bestemmende for Skibets.

3. Skib, der indføres i Skibsregistret, har Hjemsted i den Havn i Riget, som bestemmes af Rederen. For Skib, som ikke er registreret, gjælder som Hjemsted den Havn, i hvilken Rederen bor, eller som er nærmest hans Bopæl; er der flere Redere, er den bestyrende Reders Hjemsted bestemmende for Skibets; bor Rederen udenfor Riget, ansees Kristiania som Skibets Hjemsted.

4. Om norske Skibes Forpligtelse til at være forsynede med Nationalitetsbevis, Maalebrev, Bemandingsliste eller Mandskabsfortegnelse samt, naar saadant er paabudt, kongeligt Sjøpas gjælder, hvad derom særlig er bestemt.

3. Har den, för hvars räkning fartyg bygges, för byggnadens verkställande gifvit eller ntfäst sig att gifva varfsegaren eller byggmästaren förskott af penningar eller byggnadsämnen, ege han, när afhandling derom upprättats, att låta den intagas i protokollet hos magistraten i den stad, der byggnaden verkställles, eller, om byggnadsorten är belägen å landet, i närmaste stad; och njute sedan förmänsrätt, som i 17 kap. handelsbalken sägs. (*Lag af 10 Maj 1901.*)

4. Fartygs egare åligge att bestämma den ort inom riket, hvilken skall vara fartygets hemort, samt att derom göra anmälan, om fartyget är sådant, som jemlikt 2 § skall införas i fartygsregistret, hos den myndighet, hvilken förer registret, men eljest hos magistraten i den stad, som bestämts till hemort, eller, om hemorten är belägen å landet, hos kronofogden i orten. Angående hemorten skall för fartyg, hvilket bör införas i fartygsregistret, anteckning ske å det i 2 § omförmälda bevis, men eljest utfärdas särskildt bevis af den myndighet, hos hvilken anmälan skett.

Har fartygs egare underlåtit att göra sådan anmälan, som nu är sagd, skall hans hemvist anses vara fartygets hemort.

*ad § 3 S.* Efter Kapitel 17 i Handelsbalken (en Afdeling af den almindelige svenske Landslov af 1734) § 5 (i dens ved Loven af 10 Mai 1901 forandrede Lydelse) 2det Passus har Forskudsgiveren Fortrinsret i de leverede Materialier og i den ved Hjælp af Forskuddet fremstillede Gjenstand; i Passus 3 omhandles de kontraktmæssige Panthaveres Fortrinsret, som er betinget af, at Panteretten er stiftet ved Indtegnning i Skibsregistret. § 7 (forandret ved Loven af 12 Juni 1891) 1ste Passus tager Hensyn til den i Solovens § 17 omtalte Fortrinsret, som omfatter Skibet.

*ad § 4 N.* Jfr. Registerloven §§ 5, 7 og 10; Lov om Skibes Maaling af 31 Mai 1873 §§ 3—5; Lov om Skibsmandskabers Monstring af 29 Juni 1888 §§ 3 og 12, og Lov af 1 Juli 1848 om norske Skibes Forpligtelse til i visse Tilfælde at være forsynede med kongeligt Sjøpas.

Danish Text.

Norwegian Text.

Swedish Text.

to Art. 258 may be considered lost, or after having suffered damage is declared to be irreparable, or has ceased to be Swedish.

Any owner of a Swedish ship, for which there is no need of entry on the Register under the provisions made heretofore, wishing to enter the same on the Register, shall be entitled to do so; and if an application for the ship's entry is made, the provisions heretofore with regard to ships that have to be registered shall be applicable.

Further directions as to how the Ships Register shall be arranged and the registration take place will be issued by the King. (*Law of the 10th of May 1901.*)

3. Titles concerning ownership of or mortgage in a ship, which is liable to be registered, or in part of such ship, must, in order to be valid as such, be entered on the folio of the ship in the ship-register in conformity with the rules which are to be settled by a special law.

This is not the case with regard to bottomry, nor with respect to other sorts of maritime claims after chapter 11th, nor with regard to the right of mortgage according to § 17.

4. Ships, registered in the ship-register, belong to that port in the Monarchy which is designated by the owner. A ship which is not registered is considered as belonging to the port where the owner resides or which is nearest to his place of residence. If there are several owners, the ship belongs to the place where the managing owner has his place of residence.

3. A ship entered on the Register shall belong to such home port in the Kingdom as the owner or owners may appoint. Ships not registered shall belong to the port where the owner resides, or which is next to his place of residence. If there are several owners, the home port of the ship shall be determined by the residence of the managing owner. If the owner resides beyond the realm, Christiania shall be regarded as the home port of the ship.

4. In respect to the liability of Norwegian ships to be provided with a certificate of nationality, bill of measurement, crew-list, and, when so decreed, a Royal sea-brief, the special regulations relating thereto shall be applicable.

3. Any person for whose account a ship is being built, advancing or agreeing to advance money or material to the owner of the wharf or building master for the completion of the building, shall have the right, on drawing up and signing such agreement, to have the same entered on record on application to the Magistrate in the town where she is being built or in the nearest town should the place of her building be situated beyond the precincts of a town; and he shall then enjoy right of priority as mentioned in chap. 17 of the Commercial Code. (*Law of the 10th May, 1901.*)

4. Owners of ships shall decide to what place within the Kingdom a ship shall belong, and give due notice about such decision to the authority keeping the Register, provided the character of the ship is such that she must be entered in the Register of ships in accordance with Art. 2, otherwise notice shall be given to the Magistrate of the town decided upon as the place to which the ship shall belong, or, if such place be situated outside a town, to the Crown Bailiff of the place. The name of the port to which the ship belongs shall be quoted in the certificate referred to in Art. 2 in case of ships which should be entered in the Register, otherwise a separate certificate will be issued by the authority to whom the notice is given.

Should any owner omit to give such notice as aforesaid, his own place of residence shall be deemed to be the place to which the ship belongs.

To § 3 S. According to Chapter 17 of the Code of Commerce (a part of the general Swedish National Law of 1734) § 5 (in its tenor as modified by the Act of 10th May 1901) 2nd paragraph, the person who grants an advance of money has a preferential right on the delivered materials and on the object obtained by means of such advance; in the 3rd paragraph the preferential right of the pledge-holders according to agreement is dealt with; the preferential right is based on the condition that the pledge-right has come about by a declaration in the register of ships. § 7 (modified by the Act of 12th June 1891) first paragraph, considers the preferential right dealt with in § 17 of the Maritime Law; this right comprises the ship.

To § 4 N. Cf. the Registration Law §§ 5, 7 and 10; Law concerning the measurement of ships of 31st May 1873 §§ 3—5; Law concerning the inspection of crews of ships of 29th June 1888 §§ 3 and 12, and Law of 1st July 1848 concerning the obligation of Norwegian vessels to be provided with a Royal maritime passport in certain cases.

5. Naar et her i Riget hjemmehørende Skib gaar over i Udlændings Eje, udslettes det af Skibsregistret. Gaar Skibspart derved, at Ejeren bliver Udlænding, eller ved Arv eller Ægteskab over i Udlændings Eje, saaledes at Skibet mister Retten til at sejle under dansk Flag, jfr. § 1, bliver Skibet derimod først at udslette, naar der ikke inden Udgangen af 4 Maaneder er gjort Anmeldelse om, at Ejendomsforholdet er ordnet saaledes, at Skibet ikke taber sin Ret til at føre dansk Flag, eller at der over Parten er berammet Auktion til bestemt Bortsalg inden 1 Maaned derefter. I sidste Tilfælde bliver Auktionens Udfald at afvente.

Ved Udslettelsen af Skibsregistret forfalder Gæld, hvorfor der haves Panteret i Skibet, straks til Betaling.

6. Som uistandsætteligt i denne Lovs Betydning anses et Skib ikke alene, naar det ved lovlig Besigtigelse skønnes, at dets Istandsættelse enten overhovedet ikke kan udføres eller i alt Fald ikke der, hvor Skibet befinder sig, eller paa noget andet Sted, hvor det kan bringes hen, men ogsaa, naar det paa samme Maade skønnes, at Skibet ikke er Istandsættelse værd.

#### Andet Kapitel. Om Rederi.

7. Rederen hæfter, for saa vidt ej anderledes i denne Lov bestemmes, personlig, det er med hele sin Formue, for de Forpligtelser, som han selv eller gennem andre paadrager sig.

5. Ethvert norsk Skib, der er registreringspligtigt eller gaar i udenrigsk Fart, skal have anbragt paa hver af Siderne sit Navn og paa Agterspeilet baade sit og Hjemstedets Navn, alt i let læselige Bogstaver af mindst 15 Centimeters Hoide.

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tyg främmande magts undersäte, och skulle till följd af fångat eller den timade förändringen fartyget upphöra att vara svenskt, äligge sådan delegare att till svensk undersäte öfverlåta så stor del i fartyget, att dess egenskap af svenskt må kunna bevaras. Har icke inom tre månader efter det fångat skedde eller förändringen timade sådan öfverlåtelse egt rum så ock blifvit, der fartyget är registrerad, hos vederbörande myndighet anmäld, men eljest öfrige delegare kungjord; ege en hvar af samme delegare låta genom utmätningsmannen i fartygets hemort i den ordning, som för försäljning af utmätt fartyg är föreskrifven, för egarens räkning försälja den lott i fartyget, som, på sätt ofvan är nämndt, kommit i utländsk mans ego. (Lag af 27 April 1906.)

6. Som uistandsætteligt i denne Lovs Betydning anses et Skib ikke alene, naar det ved lovlig Besigtigelse skønnes, at dets Istandsættelse enten overhovedet ikke kan udføres eller ialfald ikke der, hvor Skibet befinder sig, eller paa noget andet Sted, hvor det kan bringes hen, men ogsaa, naar det paa samme Maade skønnes, at Skibet ikke er Istandsættelse værd.

#### Andet Kapitel. Om Rederi.

7. Rederen hefter, forsaa vidt ei anderledes i denne Lov bestemmes, personlig, det er med hele sin Formue, for de Forpligtelser, som han selv eller gennem andre paadrager sig.

5. Ej må andel i fartyg utan samtlige delegares medgifvande öfverlåtas till någon, som icke är svensk undersäte, derest till följd af sådan öfverlåtelse fartyget skulle upphöra att vara svenskt; sker det, vare öfverlåtelsern ogild, äfven om andelen blifvit såld efter utmätning eller under konkurs.

Får utländsk man genom arf, testamente eller gifte lott i svenskt fartyg, eller varder svensk delegare i sådant fartyg till följd af fångat eller den timade förändringen fartyget upphöra att vara svenskt, äligge sådan delegare att till svensk undersäte öfverlåta så stor del i fartyget, att dess egenskap af svenskt må kunna bevaras. Har icke inom tre månader efter det fångat skedde eller förändringen timade sådan öfverlåtelse egt rum så ock blifvit, der fartyget är registrerad, hos vederbörande myndighet anmäld, men eljest öfrige delegare låta genom utmätningsmannen i fartygets hemort i den ordning, som för försäljning af utmätt fartyg är föreskrifven, för egarens räkning försälja den lott i fartyget, som, på sätt ofvan är nämndt, kommit i utländsk mans ego. (Lag af 27 April 1906.)

6. Fartyg, som lidit skada, skall anses icke vara istandsättligt ej allenast när istandsättning är omöjlig eller, der istandsättningen måste ega rum å annan ort, fartyget icke kan föras dit, utan jemväl i det fall, att fartyget icke är värdt att istandsättas. Uppstår fråga, huruvida fartyg efter timad skada bör anses vara istandsättligt eller icke, skall yttrande derom afgifvas af besigningsmän, utsedde på sätt 41 § bestämmes.

#### Andra kapitlet. Om redande i fartyg.

7. Redare svare, der ej i denna lag annorlunda stadgas, personligen, det är med allt sitt gods, för de förpligtelser, han sjelf eller genom annan ikläder sig med afscende å fartyget.

ad § 5 S. Salg af Skibe, hvori der er gjort Exekution („Utmätning“), er nærmere omhandlet i Utsøkningsloven af 10 August 1877 § 89, 2det og 3die Passus i disses ved Loven af 10 Mai 1901 ændrede Lydelse.

ad § 7 N. Lyndeløns Fortrinsret i Konkurs er fastsat i den norske Landslov af 1687, Bog 5, Kap. 13, Art. 35.

## Danish Text.

5. When a ship belonging to a port in the Monarchy is transferred to a foreigner, it is taken off the ship-register. Should part of a ship pass into the possession of a foreigner by the fact that the owner becomes a foreigner or by inheritance or marriage, so that the ship loses its right to sail under the Danish flag — cfr. § 1 — the ship must, on the contrary, first be taken off the ship-register, if within the expiration of 4 months a notice be not given that the ownership has been regulated in such a way that the ship does not lose its right to carry the Danish colours, or that an auction for the absolute sale of the ship-share has been appointed within a month after this. In the latter case the result of the auction must be awaited.

When the ship's name is taken off the ship-register, debt, for which there is a right of mortgage in the ship, becomes payable at once.

6. According to this Law a ship is considered unfit to be repaired, not only when it is found at the legal survey that the repairs either in no way can be executed, or at all events not where the ship happens to be, nor in any other place whither it may be conveyed, but also, if it is found that the ship is not worth repairing.

## Chapter II. Of ownership.

7. Unless otherwise provided for in this Law, the owner of a ship is personally responsible, that is to say with all his property, for the engagements which he may undertake himself or through others.

## Norwegian Text.

5. Every Norwegian ship required to be registered, or every Norwegian foreign going ship, shall have her name marked on each side, and her name, and the name of the port to which she belongs, marked on the stern in legible characters, of the height of at least 15 centimètres.

Swedish part-owner become the subject of a Foreign Power and thereby the ship cease to be a Swedish ship, such part-owner shall then transfer to a Swedish subject such proportion of the ship as shall enable her Swedish nationality to be preserved. In case no such transfer has been made and duly notified to the proper authority, wherever the ship is registered, within three months from the date of the transaction, though proper notice otherwise may have been given to all the other part-owners, anyone of such other shareholders shall have the right to cause to be sold, for account of the owner, any such share in a ship which in the manner aforesaid has become the property of a foreigner. The sale shall be made by the Bailiff of the place to which the ship belongs, in the manner prescribed for sale of ships seized for debt. (*Law of the 27th April, 1906.*)

6. A ship shall be deemed unfit for repair in the sense of this Law, if by a survey according to law, it is decided that the ship cannot be repaired at all, or that, at any rate, the repair cannot take place where the ship is then present, or at any other place to which it can be removed, or if, in like manner, it is decided that the ship is not worth repairing.

## Chapter II. Shipowners.

7. Provided it is not otherwise determined in this Law, a shipowner is personally liable, i. e. to the extent of his entire estate, for all liabilities incurred by himself, or on his behalf by other parties.

## Swedish Text.

5. No share in a ship shall be transferred to any person not being a Swedish subject without the consent of all the other part-owners, should by such transfer the ship cease to be a Swedish ship; should the transfer however take place, it shall be void, even though the share was sold in consequence of a legal seizure or in bankruptcy.

Should a foreigner through inheritance, will or marriage become a part-owner in a Swedish ship, or should any become the subject of a Foreign Power and thereby the ship cease to be a Swedish ship, such part-owner shall then transfer to a Swedish subject such proportion of the ship as shall enable her Swedish nationality to be preserved. In case no such transfer has been made and duly notified to the proper authority, wherever the ship is registered, within three months from the date of the transaction, though proper notice otherwise may have been given to all the other part-owners, anyone of such other shareholders shall have the right to cause to be sold, for account of the owner, any such share in a ship which in the manner aforesaid has become the property of a foreigner. The sale shall be made by the Bailiff of the place to which the ship belongs, in the manner prescribed for sale of ships seized for debt. (*Law of the 27th April, 1906.*)

6. A ship which has sustained damage shall be considered unfit for repairs, not only when repairs are found impossible, or in case the repairs must be done at another place, and the vessel cannot be conveyed there, but also in the case of the ship not being worth repairing. Should the question arise whether the ship, subsequent to the sustaining of damage, should be considered fit for repairs or not, a report must be made by surveyors appointed in the manner prescribed in Art. 41.

## Chapter II. Ownership.

7. Unless otherwise provided for in this Law, the owner of a ship is personally responsible, that is to say, with all his property, for each and every engagement which he may himself undertake or which any other person on his behalf may undertake with respect to the ship.

To § 5 S. The sale of ships on which a seizure ("utmätning") has been effected is dealt with in detail in the Execution Law of 10th August 1877 § 89, 2nd and 3rd paragraphs, in their tenor as modified by the Law of 10th May 1901.

To § 7 N. The preferential right as regards the salaries of domestic servants in case of bankruptcy has been regulated by the Norwegian National Law of 1687, Book 5, Chap. 13, Art. 35.

For Fordringer, der opstaa ved Skipperens Misligholdelse af Kontrakt, som er indgaaet af Rederen selv eller ifølge hans Fuldmagt, og hvis Opfyldelse horte til Skipperens Pligter, saa vel som for Forpligtelser, som Skipperen i denne sin Egenskab og ikke i Henhold til særlig Fuldmagt fra Rederen paatager sig, hæfter Rederen alene med Skibsformuen, det er med Skib og Fragt; dog er han altid personlig ansvarlig for Mandskabets Fordringer efter Hyre- og Tjenestekontrakter.

For Fordringer, der opstaa ved Skibsførerens Misligholdelse af Kontrakt, som er indgaaet af Rederen selv eller ifølge hans Fuldmagt, og hvis Opfyldelse horte til Skibsførerens Pligter, saavel som for Forpligtelser, som Skibsføeren i denne sin Egenskab og ikke i Henhold til særlig Fuldmagt fra Rederen paatager sig, hæfter Rederen alene med Skibsformuen, det er med Skib og Fragt; dog er han altid personlig ansvarlig for Mandskabets Fordringer efter Hyre- og Tjenestekontrakter. Sidstnævnte Fordringer har derhos i Rederens Konkursbo samme Fortrinsret, som tilkommer Tjenestefolks Lon.

För fordringar, hvilka grunda sig på uteblifvet, ofullständigt eller felaktigt fullgörande af förbindelser, som redaren själf eller annan på grund af redarens fullmakt ingått men hvilkas fullgörande ålegat befälhafvaren i denna hans egenskap, så ock för de förbindelser, fartygets befälhafvare i denna sin egenskap, men icke på grund af redarens särskilda fullmakt, ingått, hæfte redaren allenast med fartyg och frakt; dock svare redaren personligen för besättningens fordringar på grund af hyres- och tjensteaftal som befälhafvaren slutit.

8. For Skade, der er foraarsaget af Skipperen eller nogen af Mandskabet ved Fejl eller Forsømmelse i Tjenesten, hæfter Rederen med Skib og Fragt. Dette gjælder ogsaa, naar Skade paa samme Maade er forvoldt af nogen, som, uden at høre til Skibsmandskabet, udfører Arbejde i Skibets Tjeneste.

8. For Skade, der er foraarsaget af Skibsføeren eller nogen af Mandskabet ved Svig, Forsømmelse eller Ugtsomhed i Tjenesten, hæfter Rederen med Skib og Fragt. Dette gjælder ogsaa, naar Skade paa samme Maade er forvoldt af nogen, som uden at høre til Skibsmandskabet udfører Arbejde i Skibets Tjeneste.

8. För skada, som af befälhafvare eller någon af besättningen genom fel eller försummelse i tjensten åstadkommes, hæfte redaren med fartyg och frakt; åstadkommes skadan af någon, som, utan att tillhöra besättningen, på grund af redares eller befälhafvares uppdrag förrättar skeppstjänst eller utför arbete ombord, vare lag samma.

Hvad Rederen saaledes kommer til at udrede, kan han kræve erstattet af den, som har forvoldt Skaden.

Hvad Rederen saaledes kommer til at udrede, kan han kræve erstattet af den, som har voldt Skaden.

Hvad redare sålunda nödgas utgifva ege han söka åter af den, som vållat skadan.

9. Ejes et Skib af Partredere, svarer hver af disse for Forpligtelser, der medfører personligt Ansvar, kun i Forhold til sin Andel i Skibet.

9. Eies et Skib af Partredere, svarer hver af disse for Forpligtelser, der medfører personligt Ansvar, kun i Forhold til sin Andel i Skibet.

9. Äro flere redare i ett fartyg, svare enhvar allenast i förhållande till sin lott i fartyget för sådana rederiets förbindelser, för hvilka redare svarar personligen.

10. For Skib, som ejes af Partredere, skal der vælges en bestyrende Reder, der maa være dansk Undersaat og bosat her i Riget. Er Skibet registre-

10. For Skib, som eies af Partredere, skal der vælges en bestyrende Reder, der maa være norsk Statsborger og bosat i Norge.

10. För rederi skall utses en hufvudredare.

ad § 8. Tillægget i S.: „paa grund af redares eller befälhafvares uppdrag“ tilsigter som ovenfor i Indledningen (S. 49) nævnt at befri Rederen for Ansvar for en Solskade, som er forvoldt af en Tvangslods. Forøvrigt maa Betingelserne for hans Ansvarlighed efter de tre Love være at betragte som i det Væsentlige overensstemmende. — Regien i 2det Pkt. omfatter bl. a. Lodsene. Lodsvesnet er i Danmark ordnet ved Lov 13 Juni 1879 med Tillæg af 13 Marts 1903 og 30 Marts 1906, i Norge ved Loven af 26 Mai 1899 med Tillægslov af 29 Marts 1906 og Lov om Kjendtmænd af 15 August 1908 samt i Sverige ved kgl. Forordning af 15 Febr. 1881.

ad § 9. Partrederes delte Ansvarlighed er uden enhver subsidier Solidaritet.



## Danish Text.

For claims arising from the master's non-fulfilment of a contract made by the owner personally or according to a power from him, and the carrying out of which was among the duties of the master, as well as for engagements which the master in this capacity, and not in virtue of a special power from the owner, has undertaken, the owner is only responsible as far as the value of the ship goes, that is to say with the value of the ship and the freight; he is, however, always personally responsible for the claims of the crew arising from contracts regarding their wages and services.

8. The owner is responsible with ship and freight for damages caused through fault or neglect in the service on the part of the master or any of the crew. This will also apply, when damage is caused in the same manner by any person who may be working in the ship's service without belonging to the crew.

The owner has the right to claim that which he has been obliged to pay of the person who has caused the damage.

9. In case of several persons owning a ship, each part-owner is responsible only in proportion to his share in the ship for such obligations, for which the owners are held personally responsible.

10. For ships owned by several persons a manager must be elected, who must be a Danish subject residing within the Monarchy. If the ship is

## Norwegian Text.

For claims arising from the omission of the master to perform a contract entered into by the owner or owners directly, or by his or their authority, and which it was the duty of the master to carry out, as well as for engagements which the master in his capacity as such, and not in consequence of any special authority from the owner or owners, has entered into, the owner or owners shall be liable only to the extent of the estate of the ship, i. e. the ship and the freight; but the owner or owners are always personally liable for the seamen's claims under the articles and contracts of service. In the event of the bankruptcy of the owner or owners, these latter claims shall have the same priority as those of servants for wages due.

8. For claims arising from loss or damage caused by any fraud, misconduct, or negligence of which the master, officers, or seamen have been guilty while in the service of the owner or owners, the latter shall be liable to the extent of the ship and the freight. The same rule shall apply in respect to loss or damage caused by any person other than the crew employed in the service of the ship.

Whatever the owner or owners have thus to make good can be, by him or them, claimed from the person or persons by whom such loss has been caused.

9. If a ship is owned by several part-owners, each part-owner shall, in all cases of personal liability, only be responsible in proportion to his own share of the ship.

10. If a ship is owned by part-owners, they shall appoint a managing owner, who must be a Norwegian State citizen resident in Norway.

## Swedish Text.

For claims based upon neglected, improper or wrong fulfilment of engagements, which the owner himself or any other person on his behalf may have entered into, the carrying out of which has been the duty of the master, in his capacity as such, and also for engagements which the latter in capacity of master but not on the strength of a special power from the owners has undertaken, the owner shall only be responsible with ship and cargo. The owner shall however be personally responsible for the crew's claims based on the agreements made by the master.

8. The owner is responsible with ship and freight for damage through fault or neglect in the service on the part of the master or any of the crew. This law will equally apply in cases where the damage is caused by some person not being a member of the crew but doing ship's service or working on board by order of the shipowner or master.

The owner shall have the right to recover his expenses from the person causing the damage.

9. In case of several persons owning a ship, each person shall be responsible only in proportion to his share in the ship for the obligations of the owners for which they are held personally responsible.

10. A managing owner shall be appointed for every ship. In all matters affecting the owners the managing owner should be summoned.

To § 8. The additional clause in S.: "by order of the shipowner or master" has in view, as mentioned above in the introduction (p. 49), to exempt the shipowner from liability for damage at sea caused by a compulsory pilot. In general the conditions on which his responsibility is based must according to the three Laws be considered as agreeing on the main points. — The rule of the 2nd paragraph comprises amongst others the pilot. Matters relating to pilotage are in Denmark regulated by the Law of 13th June 1879, with Supplements of 13th March 1903 and 30th March 1906, in Norway by the Law of 26th May 1899, with supplementary Law of 29th March 1906 and Law concerning private pilots of 15th August 1908, and in Sweden by the Royal Ordinance of 15th February 1881.

To § 9. The divided responsibility of part-owners is without any subsidiary joint responsibility.

ringspligtigt, bliver der om Valget at gøre Anmeldelse til Skibsregistret i Overensstemmelse med Registerlovens Regler.

Den bestyrende Reder kan i Rederiets Anliggender sagsoges paa dets Vegne. Er ingen bestyrende Reder valgt, staar det den, som vil søge Rederiet, frit for at søge, hvem han vil af Partrederne paa Rederiets Vegne. Sagsøgeren har Valget mellem deres personlige og Skibets Værneting.

11. I Forhold til Tredjemand er den bestyrende Reder i Kraft af sin Stilling berettiget til at afslutte alle de Retshandler, som en Rederiforretning sædvanlig fører med sig. Han kan saaledes antage og afskedige Skipperen og meddele ham Forskrifter, saa og oppebære Penge, der indkomme for Rederiets Regning. Han kan sagsøge i Rederiets Anliggender og i det hele repræsentere det for Retten. Derimod er den bestyrende Reder ikke uden særlig Bemyndigelse berettiget til at optage Pengelaan i Rederiets Navn eller til at sælge, pantsætte eller tegne Forsikring paa Skibet.

Har Rederiet ved særlig Forskrift indskrænket den Myndighed, som efter det anførte i Almindelighed tilkommer den bestyrende Reder, er saadan Indskrænkning uden Betydning for Tredjemand, som i god Tro har indladt sig med ham.

12. Naar Rederiets Anliggender skulle afgøres ved Partrederernes Stemmegivning, gælder som Beslutning, hvad der vedtages af den eller de Partreder, som ere mere end en Halvpart i Skibet. Halvdelen er tilstrækkelig, naar Beslutningen tiltrædes af den bestyrende Reder, selv om han ikke har Part i Skibet. Ligeledes er ved Valg af bestyrende Reder Halvdelen tilstrækkelig; naar tvende have faaet lige Stemmer, afgøres Sagen ved Lodtrækning.

Den bestyrende Reder kan i Rederiets Anliggender sagsoges paa dets Vegne. Er ingen bestyrende Reder valgt, staar det den, som vil søge Rederiet, frit for at søge, hvem han vil af Partrederne paa Rederiets Vegne.

11. I Forhold til Tredjemand er den bestyrende Reder i Kraft af sin Stilling berettiget til at afslutte alle de Retshandler, som en Rederiforretning sædvanlig fører med sig. Han kan saaledes antage og afskedige Skibsføreren og meddele ham Forskrifter samt oppebære Penge, der indkommer for Rederiets Regning. Han kan sagsøge i Rederiets Anliggender og i det Hele repræsentere det for Retten. Derimod er han ikke uden særlig Bemyndigelse berettiget til at optage Pengelaan i Rederiets Navn eller til at sælge, pantsætte eller tegne Forsikring paa Skibet.

Har Rederiet ved særlig Forskrift indskrænket den Myndighed, som efter det Anførte i Almindelighed tilkommer den bestyrende Reder, er Indskrænkningen uden Betydning for Tredjemand, som i god Tro har indladt sig med ham.

12. Naar Rederiets Anliggender skal afgøres ved Partrederernes Stemmegivning, gælder som Beslutning, hvad der vedtages af den eller de Partreder, som ere mere end Halvparten i Skibet. Halvparten er tilstrækkelig, naar Beslutningen tiltrædes af den bestyrende Reder, selv om han ikke har Part i Skibet. Ved Valg af bestyrende Reder er Halvparten tilstrækkelig; har to faaet lige Stemmer, afgøres Sagen ved Lodtrækning.

I sak, som angår rederiet, må hufvudredaren sökas. Är hufvudredare ej vald, ege den, som vill söka rederiet, instämma hvilken han vill af redarne att för rederiet svara.

11. I förhållande till tredjoman ege hufvudredaren i kraft af sitt uppdrag sluta alla afhandlingar och ingå alla förbindelser, hvilka rederirörelsen vanligen medför; han ege sålunda antaga och afsätta befälhafvare samt meddela honom föreskrifter, uppbara medel, som för rederiets räkning inflyta, äfvensom företråda rederiet inför rätta. Utan särskildt bemyndigande ege hufvudredaren icke upplåna penningar i rederiets namn eller sälja eller förpanta fartyget eller derå taga försäkring.

Har rederiet genom särskildt föreskrift inskränkt den befogenhet, hvilken sålunda tillkommer hufvudredaren, vare rederiet ej berättigadt att åberopa sådan inskränkning mot tredje man i annat fall, än då denne ej varit i god tro.

12. Beslut i rederiets angelägenheter må ej af redarne fattas utan vid allmänt sammanträde, dertill kallelse blifvit i tidning inom orten minst åtta dagar förut kungjord eller annorledes delgifvits samtliga redarne. Uteblifver redare från sammanträde, nöje han sig åt de närvarandes beslut.

*ad § 11.* Grænserne for den bestyrende Reders Fuldmagt overfor Tredjemand er formentlig efter alle tre Love den samme; de noget afvigende Udtryk i S.: „hvilke rederirörelsen vanligen medför“ er neppe at forstaa anderledes end det tilsvarende Udtryk i D. og N., nemlig et Rederis Forretningsdrift i Almindelighed, ikke det paagjældende enkelte Rederi i dettes individuelle Eiendommelighed, som i Regelen er Tredjemand ubekjendt, jfr. ogsaa 2det Passus.

Danish Text.

Norwegian Text.

Swedish Text.

bound to be registered, notice must be given about the election to the ship-register in conformity with the rules of the Law of Registration.

The manager can, in matters affecting the owners, be sued on their behalf. Should no manager have been elected, the person wishing to sue the owners is at liberty to sue whichever of the owners he likes on behalf of the others. The plaintiff has the right to choose between their personal venue and that of the ship.

11. In matters affecting a third party the manager has in virtue of his position the right to conclude all the judicial acts a ship-owner's business generally entails. He has consequently the power to engage and dismiss the master, to give him instructions, and to receive money paid in to the owners. He may sue in affairs regarding the ship-owner business and upon the whole appear for it in court. On the other hand, the manager cannot without special authorization borrow money in the name of the owners, nor sell, mortgage or insure the ship.

In case the owners should, by any special provision, have limited the power with which, according to the above, a manager is usually invested, such limitation is of no importance as regards a third party who in good faith has entered into business with him.

12. In case any decision is to be taken concerning the affairs of the owners through the votes of the part-owners, the decision holds good, which is sanctioned by the owner or the owners possessing more than one half of the ship. One half is enough, when the manager seconds the decision, even if he has no share in the ship. One half is also enough at the election of a manager; when two persons have obtained an equal number of votes, the matter is determined by lot.

Legal proceedings may be instituted against the managing owner, as representative of the owners, in all matters connected with the affairs of the business. If no managing owner is appointed, it shall be lawful to bring an action against any part-owner as representing all the part-owners.

11. In respect to third parties, the managing owner is entitled in virtue of his office to perform all transactions usually connected with the business of ship-owners. He is, accordingly, empowered to appoint and dismiss the master, to give him instructions, and to collect and receive money due to the owners. He may likewise institute legal proceedings on behalf of the owners, and be their general representative in actions at law. But he must not, without special authority, raise loans in the names of the owners, or sell, or mortgage, or insure the ship.

If, by special instructions, the owners have restricted the power which, according to the preceding paragraph, generally belongs to the managing owner, such restriction shall not affect a third party who, in all good faith, has entered into dealings with him.

12. When matters concerning the business are to be determined by the vote of the part-owners, that resolution shall have effect which is agreed to by the part-owner or part-owners who own more than one half of the ship. One half is sufficient, if the resolution is supported by the managing owner, even though he does not possess a share in the ship. Votes representing one half of the ship are sufficient to confirm the election of a managing owner.

Should no managing owner have been elected, any person wishing to sue the owners shall have the right to summon any one of the owners of the ship to plead for the owners jointly.

11. In all matters affecting a third party the managing owner, in virtue of his power, shall have to conclude all negotiations and enter upon all such engagements or undertakings as the shipping trade generally entails. The managing owner shall consequently have the power to engage and dismiss the master, to give him instructions, to receive money or monies due and coming to the owners, and to act and plead on behalf of the owners in any Court or Courts of Law. Unless furnished with special power, the managing owner cannot borrow money in the name of, or on behalf of the owners, nor sell, mortgage, or insure the ship.

In case the owners by any special provision have limited the power thus lodged with the managing owner, they shall not be able to avail themselves of such limitation as regards a third party, unless such party should not be acting in good faith.

12. No resolution in the affairs of the owners shall be made and passed by them except at an ordinary meeting called together by advertisement in one or more of the local newspapers, at least eight days previous to such meeting, or otherwise duly communicated to each and every of the said owners. In case of non-attendance, the owner failing to attend must be satisfied with the decision passed by those present.

To § 11. The limits of the power of a managing owner as regards third persons are presumably the same according to the three Laws; the somewhat different expression in S.: "as the shipping trade generally entails" is hardly to be understood otherwise than the corresponding expression in D. and N., viz., the operations of a shipowner's business in general, not the individual peculiarity of the particular shipowner in question, which as a rule is unknown to third persons; cf. also the 2nd paragraph.

Beslutninger, som ere i Strid med Rederikontraktens Indhold eller ligge uden for Rederiets Ojemed, ere ikke gyldige, medmindre samtlige Medredere deri ere enige.

Beslutninger, som er i Strid med Rederikontraktens Indhold eller ligger udenfor Rederiets Ojemed, er ikke gyldige, medmindre samtlige Medredere er enige deri.

Vid omröstning beräknas hvarje redares röstetal efter den andel, han eger i fartyget, och gälle såsom beslut hvad de säga, hvilkas andelar tillsammans äro de största. Hafva vid val af hufvudredare två eller flere erhållit röster för

lika andelar hvardera, skilje lotten dem emellan, men eljest gälle vid lika röstetal den mening, hufvudredaren omfattar. Beslut, som strider mot gällande rederiaftal eller angår ämne, hvilket faller utom rederiets ändamål, vare ej gällande utan att det af samtlige redarne biträdes.

Vid sammanträde skall föras protokoll, hvilket derefter hos hufvudredaren förvaras. Af protokollet ege enhvar redare rätt att taga afskrift.

13. I Forholdet til Medrederne komme de almindelige Regler om Fuldmagt til Anvendelse paa den bestyrende Reders Berettigelse til at handle paa Rederiets Vegne. For saa vidt Omstændighederne ej ere til Hinder derfor, har han at sammenkalde Medrederne til Overlægning eller paa anden Maade indhente deres Mening, naar vigtigere Anliggender forefalde, navnlig naar der er Spørgsmaal om at anvende Skibet i væsentlig forskellig Fart, om at ansætte eller afsætte Skipper eller om at foretage nogen betydeligere Reparation.

13. I Forholdet til Medrederne kommer de almindelige Regler om Fuldmagt til Anvendelse paa den bestyrende Reders Berettigelse til at handle paa Rederiets Vegne. Forsaa vidt Omstændighederne ei er til Hinder derfor, har han at sammenkalde Medrederne til Overlægning eller paa anden Maade indhente deres Mening, naar vigtigere Anliggender forefalder, navnlig naar der er Spørgsmaal om at anvende Skibet i væsentlig forskellig Fart, om at ansætte eller afsætte Skibsfører eller om at foretage nogen betydeligere Reparation.

13. Der ej tvingande omständigheter hindra, åligger hufvudredaren att till öfverläggning sammankalla medredarne eller annorledes inhemta deras föreskrift, när vigtiga angelägenheter förekomma, såsom när fråga nppstår om väsentlig förändring med afseende å den fart, hvari fartyget användes, eller betydligare reparation å fartyget.

14. Den bestyrende Reder kan til enhver Tid afsættes ved Beslutning af Partredere, der eje mere end en Halvpart i Skibet. Ejer han selv Halvparten eller mere, kan Retten paa en Partreders Begjæring afsætte ham, om dertil findes skellig Grund, og beskikke en midlertidig Bestyrer.

14. Den bestyrende Reder kan til enhver Tid afsættes ved Beslutning af Partredere, der eier mere end en Halvpart i Skibet. Eier han selv Halvparten eller mere, kan Retten paa en Partreders Begjæring afsætte ham, om dertil findes skjellig Grund, og beskikke en midlertidig Bestyrer.

14. Hufvudredaren kan när som helst skiljas från sin befattning genom beslut af redarne i den ordning, 12 § bestämmer; eger han sjelf hälften i fartyget eller derutöfver, må domstol på medredares käromål skilja honom från befattningen, om giltiga skäl dertill äro.

15. Den bestyrende Reder har at fore særskilt Regnskab over sin Forvaltning af Rederiets Anliggender og for samme at gøre Rede og Rigtighed. Regnskab for Medrederne har han, naar ikke anderledes af Rederiet beslutes, at aflægge for hvert Kalenderaar senest inden 1 Maaned efter dets Udlob.

15. Den bestyrende Reder skal fore særskilt Regnskab over sin Forvaltning af Rederiets Anliggender og gjøre Rede og Rigtighed for samme. Regnskab for Medrederne har han, naar ikke anderledes af Rederiet beslutes, at aflægge for hvert Kalenderaar, senest 1 Maaned efter dets Udlob.

15. Hufvudredaren skall föra särskild räkenskap öfver förvaltningen af rederiets angelägenheter och för denna afgifva redovisning inför rederiet. Der ej af rederiet annorlunda beslutes, skall redovisning afgifvas för kalenderår, inom en månad efter dess utgång.

16. Naar Regnskab aflægges, har den bestyrende Reder enten at omsende dette til hver enkelt

16. Naar Regnskab aflægges, skal den bestyrende Reder omsende det til hver enkelt Part-

16. Redovisning skall afgifvas å sammanträde, dertill redarne kallats på sätt 12 § be-

Danish Text.

Norwegian Text.

Swedish Text.

Decisions contrary to the contents of the contract made between the owners, or having reference to matters outside the special shipping business of the owners, are not valid, unless with the unanimous consent of all the owners.

but, should two candidates obtain an equal number of votes, the choice shall be decided by lot.

Decisions contrary to the articles of association, or beyond the object or intentions of the business, are not valid unless approved by all part-owners.

When balloting takes place, each owner has a number of votes corresponding to his share in the ship, and the voting of those in majority shall constitute the decision of the meeting. Should, at the election of a managing owner,

two or more persons each obtain an equal number of votes, lots shall be drawn, but in any other case when the votes are equal the managing owner shall have the casting vote. Decisions contrary to agreements made between the owners, or having reference to matters outside the special shipping business of the owners, are not valid, unless with the unanimous consent of all the owners.

Minutes shall be kept of the meeting and the Record shall be preserved by the managing owner. Every owner shall have the right to take a copy of the said Record.

**13.** With regard to the other owners the common rules about proxies are applicable to the power of the manager to act on behalf of all the owners. Unless circumstances prevent him from so doing, the manager has to call the owners together for discussion, or otherwise procure their instructions when important matters occur, especially if there should be a question of employing the ship in an essentially different trade, of engaging or dismissing the master, or of undertaking any repairs of importance.

**13.** In the relations between the managing owner and his co-owners, the general regulations (law) in respect to agency shall apply to the right of such managing owner to act on behalf of the owners. If circumstances do not prevent it, he must, in all cases of importance, convene a meeting of the co-owners for deliberation thereon, or, in some other manner, obtain their opinion on the subject, and more particularly so, if there is a question of employing the ship in an essentially different trade, of appointing or dismissing a master, or of undertaking any considerable repairs.

**13.** Unless urgent circumstances prevent him from so doing, the managing owner shall call the owners together for discussion or otherwise receive their instructions when important matters appear, for instance, in questions of making any considerable change in the trade in which the ship is employed, or in questions as to repairs of importance.

**14.** The manager may at any time be removed by a decision of those of the owners who possess more than one half of the vessel. Should he himself own one half of the vessel or upwards, the Court may at the request of a part-owner dismiss him, provided that there are sufficient reasons for his dismissal, and appoint a temporary manager.

**14.** Part-owners owning more than one moiety of the ship can, by a resolution, dismiss the managing owner at any time. If he himself owns one half of the ship or more, the Court can dismiss him on the application of a part-owner, if it finds good reasons for so doing, and appoint a provisional manager of the ship.

**14.** A managing owner can at any time be removed by a decision of the owners passed in the manner prescribed in Art. 12. Should he be owner to the extent of one half of the ship or upwards, the Court may remove him, should his partners summon him to resign, provided there are sufficient reasons for his removal.

**15.** The manager has to keep separate accounts of his management of the business and deliver to the owners a statement thereof. If not otherwise decided by the owners, this statement of the accounts must be made to the owners for each calendar year within 1 month after its expiration.

**15.** The managing owner shall keep a special account of his management of the business and render a satisfactory account thereof. If not otherwise agreed upon by the owners, he shall render the accounts for each calendar year to the co-owners, at latest one month after its expiry.

**15.** The managing owner shall keep separate accounts of the management of the business of the owners and deliver to them a statement thereof. Where not otherwise decided by the owners, the rendering of account shall be made for the calendar year within a month of its expiration.

**16.** When the statement of the account is to be delivered, the manager has to send it to

**16.** In rendering the accounts the managing owner shall forward them to each

**16.** The statement shall be delivered at a meeting to which the owners are to be

Partreder eller at fremlægge det til Eftersyn. For at kunne kontrollere dets Rigtighed har enhver Partreder Adgang til Regnskabsbøger og Bilag, særligt til Skipperens Regnskaber.

reder. For at kunne kontrollere dets Rigtighed har enhver Partreder Adgang til Regnskabsbøger og Bilag, særligt til Skibsførerens Regnskaber.

stämmor, och skola vid sammanträdet räkenskaperna till granskning framläggas.

Iudsigelser mod den bestyrende Reders Regnskab maa, for saa vidt de ikke grunde sig paa Regnefejl eller Svig, gores gjældende ved Sogsmaal inden seks Maaneder, efter at Regnskabet er aflagt og Underretning derom meddelt.

Iudsigelser mod den bestyrende Reders Regnskab maa, forsaavidt de ikke grundes paa Regnefeil eller Svig, gjøres gjældende ved Sogsmaal inden 1 Aar, efterat Regnskabet er aflagt og Underretning derom meddelt.

Vill redare klandra redovisning, göra det genom stämning inom sex månader efter det redovisningen afgafs; försittes den tid, hafve redare sin rätt till klander förlorat.

17. Til Bestridelse af de Udgifter, som kræves af Rederiforretningen, paaligger det enhver Partreder at yde det fornødne Bidrag i Forhold til hans Andel i Skibet. Forsommer nogen Partreder efter Paakrav at betale sit Bidrag, og dette forskydes af den bestyrende Reder eller nogen af Medrederne, har den forsommelige at erstatte Udlæget med 8 pCt. aarlig Rente, fra det blev gjort, samt derhos ogsaa Premien for den Forsikring, som den forskudsydende til sin Sikkerhed maatte have tegnet. For sin Fordring har Kreditor Panteret i den forsommeliges Part i Skibet og det paa Parten faldende Udbytte, hvilken Ret gaar foran ældre kontraktmæssigt Pant i Parten, men staar tilbage for de i Htte Kapitel omhandlede Sopotanterettigheder saavel som for ældre kontraktmæssigt Pant i det hele Skib og fortabes, naar den ikke gores gjældende ved Sogsmaal inden et Aar fra den Tid, da Udlægget fandt Sted.

17. Til Bestridelse af de Udgifter, som kræves af Rederiforretningen, paaligger det enhver Partreder at yde det fornødne Bidrag i Forhold til hans Andel i Skibet. Forsommer nogen Partreder efter Paakrav at betale sit Bidrag, og udlægges dette forskudsvis af den bestyrende Reder eller nogen af Medrederne, har den Forsommelige at erstatte Udlægget med 8 pCt. aarlig Rente saavel som Premien for den Forsikring, som den Forskudsydende til sin Sikkerhed maatte have tegnet. For sin Fordring har Kreditor Panteret i den Forsommeliges Part i Skibet og det paa Parten faldende Udbytte. Denne Ret gaar foran ældre kontraktmæssigt Pant i Parten, men staar tilbage for de i Htte Kapitel omhandlede Sopotanterettigheder saavel som for ældre kontraktmæssigt Pant i det hele Skib og tabes, naar den ikke gores gjældende ved Sogsmaal inden 1 Aar fra den Tid, da Udlægget gjordes.

17. Till bestridande af de utgifter, som af rederirörelsen påkallas, åligge enhver redare att i mån af behof bidraga i förhållande till sin andel i fartyget. Försummar redare att vid anfordran erlägga beslutet bidrag och varder detta af hufvudredaren eller annan redare förskjutet, vare den försumlige skyldig att å förskjutna beloppet erlägga ränta efter åtta procent om året, tills betalning sker, äfvensom ersätta kostnaden för den försäkring, som förskottsgifvaren må hafva tagit till sin säkerhet. Borgenären njute för sin fordran panträtt i den försumliges andel i fartyget och förmånsrätt till betalning efter hvad i 17 kap. handelsbalken sägs; ege ock, i afräkning å sin fordran, i den försumliges ställe uppbära den utdelning, som på dennes andel belöper.

Den här stadgade panträtt och förmånsrätt upphör, derest icke genom stämning betalning sökes inom ett år efter det fordringen uppkom.

18. Naar Beslutning tages om ny Rejse eller om Skibets Reparation efter fuldendt Rejse og Tilskud kræves til Beslutningens Udførelse, er enhver Partreder, som ikke har stemt for Rejsen eller Reparationen, berettiget til at frigjøre sig for at tilsvare sin Del af Tilskuddet ved uden Vederlag at afstaa sin Part i Skibet, for saa vidt der ikke hviler særlig Hæftelse paa den. Men vil han gøre Brug af denne Ret, maa han skriftlig meddele det til den

18. Naar Beslutning tages om ny Reise eller om Skibets Reparation efter fuldendt Reise, og Tilskud kræves til Beslutningens Udførelse, er enhver Partreder, som ikke har stemt for Rejsen eller Reparationen, berettiget til at frigjøre sig for at tilsvare sin Del af Tilskuddet ved uden Vederlag at afstaa sin Part i Skibet, forsaavidt der ikke hviler særlig Hæftelse paa den. Vil han gjøre Brug af denne Ret, maa han skriftlig meddele det til den bestyrende

18. Beslutes ny resa eller reparation af fartyget efter slutad resa, ege redare, som ej deltagit i beslutet, utan lösen afstå sin lott i fartyget till öfrige redare och dermed blifva befriad från gäldande af tillskott för beslutets verkställande. Den som vill sålunda afstå sin lott i fartyget, göra derom skriftlig anmälan hos hufvudredaren inom tre dagar efter det beslutet fattades eller, om han då icke var tillstädes, efter det han erhöill del af beslutet. Den af-

## Danish Text.

each of the owners, or produce it for examination. To be able to control its correctness, every owner is permitted to see the account-books and their enclosures, especially the master's accounts.

Objections to the accounts of the manager must, provided they are not caused by miscalculations or fraud, be advanced by summons within six months after the statement of the accounts has been delivered and communicated.

17. Towards the meeting of the expenses necessary to carry out the business every owner is bound to contribute in proportion to his share in the ship. Should any owner on requisition fail to pay his share, and this share be advanced by the manager or any other of the part-owners, the person in default is bound to make up for it by paying interest at the rate of eight per cent. per annum on the amount so advanced from the date of its advancement, as well as the premium of any insurance effected for his own security by the person advancing the money. For his claim the creditor has a legal claim upon the share which the person in default has in the ship, and upon any dividend payable on the said share, and this claim has priority in relation to any older mortgage in the share according to contract, but is secondary to the maritime claims mentioned in chapter 11, as well as to older mortgages stipulated by contract upon the whole of the ship, and is forfeited, if not legally claimed within a year from the date of the outlay.

18. In case a new voyage, or the repairing of the ship at the completion of a voyage is decided upon, and a contribution is required for the carrying out of the decision, any part-owner who has not voted for the voyage or the repairs, has a right to withdraw from the payment of his part of the contribution by giving up, without any compensation, his share in the ship, provided no special claim rests upon it. But if he wishes to avail

## Norwegian Text.

of the part-owners. In order to check the correctness of accounts, all part-owners shall have access to the account-books, appendices, and vouchers, and specially to the accounts of the master.

All exceptions taken to the accounts which are not founded on fraud or miscalculation, must be made valid by taking action at law within one year after the accounts have been rendered, and notice given in respect thereto.

17. Each part-owner shall contribute to the expenses required for conducting the business in proportion to his share in the ship. Should any part-owner omit to pay his contribution on demand, and this be advanced by the managing owner or any of the part-owners, the defaulter shall make good the amount advanced, together with 8 per cent. per annum interest thereon, and the cost of the premium paid on any insurance which the lender may have effected as security for the advance. The lender shall have a right of mortgage on the defaulter's share in the ship, and a claim on the profits derived therefrom, such right and prior claim to have the priority of all previous legally contracted mortgages on such share, but not of those rights of maritime lien mentioned in chapter 11, or previous legally contracted mortgages on the whole ship, and it shall become invalid when not established by action at law within the space of one year after the advance was made.

18. When it has been decided to send the ship on a new voyage, or to repair it after the completion of a voyage, and the part-owners are called upon to advance money for the purpose, any part-owner who has not voted for the voyage or the repair, may free himself from paying his share of the amount required, by abandoning, without any compensation, his share in the ship, provided the share be free from any special incumbrance.

## Swedish Text.

called in the manner prescribed in Art. 12 and at which meeting all the accounts shall be produced for examination.

Any owner wishing to complain of the accounts may do so by summons within six months from the date of the rendering of the account. Failing so to summon, he shall forfeit his right to complain.

17. Towards the meeting of the expenses necessary to carry on the business, every owner shall contribute in proportion to his share as required. Should any owner on requisition fail to pay his share in the expenses to the amount decided upon, and such part of the expenses be advanced by the managing owner or any other of the part-owners, the owner in default shall pay interest at the rate of eight per cent. per annum on the amount so advanced until payment is effected, together with the cost of any insurance taken by the person advancing the money for his own security. The creditor shall have a legal claim on the share in the ship of the person in default, and shall enjoy priority in accordance with Chap. 17 of the Commercial Code; and such creditor shall also have the right to receive on account of his claim, and in lieu of the person in default, any dividend payable on the said share.

The claim and right of priority stipulated above shall cease, unless payment is sued for by summons within the expiration of one year from the date of the advancement of the claim.

18. In case a fresh voyage or the repairing of the ship at the completion of a voyage be decided upon, any owner, not being a party to the decision, shall have the right to surrender, without receiving any compensation, his share in the ship to his part-owners and thereby be released from the payment of the contribution necessary to carry the said decision into effect. Any person desirous of thus surrendering his share in the

## Dansk Text.

bestyrende Reder saa betimelig, at denne har Underretning derom inden 3 Dage efter, at Beslutningen er bleven fattet, eller, hvis han da ikke har været til Stede, inden 3 Dage efter, at Beslutningen er bleven ham meddelt. Den afstaaede Skibspart fordeles mellem de øvrige Medredere i Forhold til deres tidligere Andel i Skibet.

Er der tegnet en endnu gældende Forsikring paa den afstaaede Part, ere de øvrige Partredere solidarisk forpligtede til at tilsvare Præmien for den tilbagestaaende Tid.

19. Gevinst og Tab ved Rederiforretningen fordeles paa Partrederne i Forhold til enhvers Andel i Skibet.

Findes der efter aflagt Rederiregnskab Overskud, skal det uddeles til Partrederne, for saa vidt der ikke haves nødvendigt Brug derfor i Rederiforretningen.

20. Rederiet opløses ikke derved, at en Part i Skibet overgaar til en anden Ejer, eller ved en Partreders Død, Umyndiggørelse eller Konkurs.

En Partreder, som vil overdrage sin Skibspart eller Del af denne til Andenmand, behøver ikke dertil sine Medreders Samtykke, ligesom disse hverken have nogen Forkøbsret eller Lösningensret. Dog udfordres samtlige Medreders Samtykke for at Overdragelse af Skibspart, selv om den sker ved Tvangssalg, kan være gyldig, naar den vil medføre, at Skibet taber Ret til at føre dansk Flag.

## Norsk Text.

Reder saa betimelig, at denne har Underretning derom inden 8 Dage, efterat Beslutningen er bleven fattet, eller, hvis vedkommende Partreder da ikke har været tilstede, inden 8 Dage, efterat Beslutningen er bleven ham meddelt. Den afstaaede Skibspart fordeles mellem de øvrige Medredere i Forhold til deres tidligere Andel i Skibet.

Er der tegnet en endnu gældende Forsikring paa den afstaaede Part, er de øvrige Partredere solidarisk forpligtede til at tilsvare Præmien for den tilbagestaaende Tid.

19. Vinding og Tab ved Rederiforretningen fordeles paa Partrederne i Forhold til enhvers Andel i Skibet.

Forsaavidt der ikke i Rederiforretningen haves Brug for tilstedeværende Overskud, bliver det at udrede til Partrederne.

20. Rederiet opløses ikke derved, at en Part i Skibet overgaar til en anden Eier, eller ved en Partreders Død, Umyndiggørelse eller Konkurs.

Naar Overdragelse af Skibspart vil medføre, at Skibet taber Ret til at føre norsk Flag, udfordres Samtykke fra samtlige Medredere, forat Overdragelsen, selv om den sker ved Tvangsauktion, kan være gyldig.

Ellers behøver en Partreder, som vil overdrage sin Skibspart eller en Del af den, ikke dertil sine Medreders Samtykke. Men hvis Overdragelse sker

## Svensk text.

trädde lotten skall fördelas mellan öfrige redare efter förhållandet mellan deras andelar i fartyget.

Är å den afträdde lotten tagen försäkring, gällande för tiden efter dess afträdande, vare öfrige redare förbundne att mot försäkringens öfvertagande, en för alla och alla för en, gälda motsvarande andel af premien.

19. Vinst och förlust, som af rederirörelsen uppkommer, skall fördelas å redarne i förhållande till enhvars andel i fartyget.

Finnes enligt afgifven redovisning öfverskott, skall detta till redarne utdelas i den mån sådant kan ske utan hinder för nödiga utgifters bestridande.

20. Ej må rederi brytas derföre att lott i fartyget genom arf, köp eller annorledes öfvergår till annan man, eller att redare förklarar omyndig eller försättes i konkurs.

Varder fartygslott af egaren såld till annan än medredare, vare öfrige delegare, en eller flere, så framt icke försäljningen skett å offentlig auktion, berättigade att mot de vid försäljningen betingade vilkor, sedan desamma, der medredaren det äskar, blifvit af säljaren och köparen inför domstol med ed fästa, af köparen till sig lösa fartygslotten; åliggande det den eller dem, som lösa vilja, att inom fjorton dagar efter erhållen kunskap om försäljningen gifva det köparen tillkänna vid lösningensrättens förlust. Äro de, som lösa vilja, flere, ege dertill rätt i förhållande till den andel, hvardera i fartyget eger.

ad § 20. Efter D. gives der ingen Udlosningsret for Partsrederne, naar en Skibspart er solgt til en udenfor Rederiet staaende.



## Danish Text.

himself of this right, he must notify it in writing to the manager in so good time, so that the latter is informed of it within three days from the date of the decision or, if he was not then present, within three days from the date he received intimation of the decision. The surrendered share in the ship shall then be divided among the other part-owners in proportion to their former shares in the ship.

Should any insurance, still valid, have been effected on the surrendered share, all the other part-owners are bound jointly and separately to pay the premium for the time which remains.

**19.** Profit and loss occurring from the business is to be divided among the owners in proportion to their respective shares in the ship.

Should there after the statement of the accounts be any surplus, it is to be divided among the part-owners, provided it is not absolutely necessary to the carrying on of the business.

**20.** The ownership is not dissolved by the fact that a share in the ship is transferred to another possessor, nor by the death of a part-owner, nor by his being placed under guardianship, nor by his becoming bankrupt.

A part-owner who wishes to transfer his share in the ship or part of it to a third party, needs not to have the other owners' consent to this, the latter having neither any right of pre-emption nor of redemption. The consent of all the owners is, however, requisite in order that the transfer of a ship-share may be valid, even if it is effected by execution sale, when the transfer will lead to the consequence that the ship loses its right to carry the Danish colours.

## Norwegian Text.

If the part-owner should desire to make use of this right, he must notify it in writing to the managing owner in such good time that the notice is received within eight days after the decision was taken, or, if the part-owner was not personally present on the occasion, within eight days after he was informed thereof. The abandoned share shall be divided between the other owners in proportion to their shares in the ship.

If the abandoned share is insured, and the insurance still remains in force, the other part-owners shall be bound, in solidum, to repay that part of the premium paid for the remainder of the term.

**19.** Profit or loss accruing from the business shall be divided between the part-owners in proportion to their shares in the ship.

Provided the business does not need the surplus moneys obtained, such surplus shall be divided amongst the part-owners.

**20.** A part-ownership is not dissolved through the transfer of a share in the ship to another party, or through the death, business incapacity, or bankruptcy of a part-owner.

If by transfer of a share in a ship, the ship would lose its right of carrying the Norwegian flag, the consent of all the co-owners is required to render such transfer valid, even when such transfer is effected by compulsory sale by auction.

In other cases a part-owner may transfer his share in the ship, either in whole or in part, without the consent of his co-owners. But if such share

## Swedish Text.

ship shall notify his wish in writing to the managing owner within three days from the date of the decision, or, if he was not then present, from the date he received intimation of the said decision. The surrendered share shall be divided between the owners in proportion to their respective shares in the ship.

Should any insurance have been taken on the surrendered share, and such insurance still remains in force at the time of the surrender, all the other owners, in taking over the insurance, shall be bound jointly and severally to pay the corresponding part of the premium.

**19.** Profit and loss accruing from the business shall be divided between the owners in proportion to their respective shares in the ship.

Any surplus according to the accounts rendered shall be divided and paid to the owners so far as the payment of necessary expenses will permit.

**20.** The fact that any share or shares in the ship have been transmitted to another person in consequence of inheritance, purchase or otherwise, or that any one of the owners has been placed under guardianship or declared bankrupt, does not involve the dissolution of the ownership.

In case a share in a ship is sold to a person not being a part-owner, the other part-owner or owners, unless the sale was made by public auction, shall have the right to recover from the purchaser the said share upon the conditions stipulated at the sale.

The seller and purchaser should confirm on oath before a Court of Justice the conditions of the transaction, should the part-owner so require. Any person or persons wishing so to recover shall notify their intention to the buyer, within a fortnight from the date of receiving information of such sale, or forfeit the right to recover.

*To § 20.* According to D. there exists no right to redeem for co-owners in case a share of a vessel has been conveyed to a person other than a co-owner.

til andre end Medrederne, har enhver af Medrederne Ret til at indløse Parten, saafremt han senest sjette Virkedag efter den Dag, da Anmeldelse om Overdragelsen er foregaaet overensstemmende med § 21, andet

Led, tilbyder den nye Eier Lösningssummen eller, hvis denne endnu ikke er paa det rene, betryggende Sikkerhed. Lösningssummen bestemmes i Tilfælde af Tvist ved Skjø; den maa aldrig sættes lavere end den Kjøbesum, for hvilken den nye Eier selv har erhvervet Parten. Bliver det nødvendigt at indtale Parten ved Sogsmaal, maa Sag reises inden 3 Maaneder efter Anmeldelsen. Sælges en Skibspart ved Auktion, og den bestyrende Reder 3 Virkedage for Auktionens Afholdelse er bleven underrettet om denne, tilkommer der Rederne ingen Lösningsret. Gjør flere af Medrederne samtidig Krav paa at indløse, har samtlige Ret dertil i Forhold til sine Andele i Skibet. Er Indløsning allerede foregaaet for en af Medredernes Regning, har de øvrige ingen yderligere Lösningsret i Anledning af samme Salg.

Gaar en Skibspart derved, at en Partreder ophører at være dansk Undersaat, eller ved Arv eller Ægteskab over i Udlændings Eje, og dette vil have til Følge, at Skibet ikke længer kan sejle under dansk Flag, jfr. § 1, har enhver Medreder Ret til at begære Parten solgt ved Auktion, saafremt Ejeren ikke inden tre Maaneder har truffet saadan Ordning, at Skibet ikke taber sin Ret til at føre dansk Flag. Auktionen afholdes efter samme Regler og med samme Virkning som Tvangsauktioner.

Gaar en Skibspart derved, at en Partreder ophører at være norsk Statsborger, eller ved Arv eller Ægteskab over i Udlændings Eje, saaledes at Skibet ophører at være norsk, har enhver Medreder Ret til at begjære Parten solgt ved Auktion, saafremt Ejeren ikke inden 3 Maaneder har truffet saadan Ordning, at Skibet ikke taber sin Ret til at føre norsk Flag. Auktionen afholdes efter samme Regler og med samme Virkning som Tvangsauktioner.

21. Naar Skibspart afhændes, indtræder Erhververen over for Medrederne ved selve Overdragelsen i alle en Medreders Rettigheder og Forpligtelser. Han er paa samme Maade som Overdrageren bunden ved alle af Rederiet for Overdragelsen tagne Beslutninger eller paa begyndte Foretagender, med deraf flydende Forpligtelser, og Medrederne kunne bringe i Modregning imod ham Fordringer, som de ifølge Rederiforholdet have paa Overdrageren. Over for Tredjemænd bliver han ansvarlig som Partreder for alle de Rederiforpligtelser, som indgaaes efter Overdragelsen.

21. Naar en Skibspart overdrages, indtræder den nye Eier strax i alle en Partreders Rettigheder og Forpligtelser over for Medrederne. Han er paa samme Maade som Overdrageren bunden ved alle af Rederiet for Overdragelsen tagne Beslutninger eller paa begyndte Foretagender med deraf flydende Forpligtelser, og Medrederne kan bringe i Modregning mod ham Fordringer, som de ifølge Rederiforholdet har paa Overdrageren. Over for Tredjemænd bliver han ansvarlig som Partreder for alle de Rederiforpligtelser, som indgaaes efter Overdragelsen.

21. Öfverlåter redare sin lott i fartyget till annan man, inträder nye egaren strax i en redares alla rättigheter och förpligtelser mot medredarne. Hvad rederiet, förrän öfverlåtelsern skedd, lagligen gjort och beslutit vare jemväl mot nye egaren gällande; häftar öfverlåtarens för oguldet tillskott till rederirörelsen, ege medredare jemväl mot nye egaren rätt att afräkna sådan fordran å den utdelning, som belöper å den öfverlåtna lotten i fartyget. I förhållande till tredje man svare nye egaren såsom redare för de förbindelser, rederiet ingår efter det öfverlåtelsern skett.

ad § 21. Partrederier bliver ikke som saadanne at indføre i Handelsregistret; anderledes selvfølgelig, naar Rederiet er ordnet som et Aktieselskab.

Danish Text.

Norwegian Text.

Swedish Text.

Should a share in a ship, either by the fact that a part-owner ceases to be a Danish subject, or by inheritance or by marriage, pass into the possession of a foreigner, and this should lead to the consequence that the ship can no longer sail under the Danish flag, *cfr.* § 1, any of the other owners has the right to request that the share shall be sold by auction, if the new possessor has not, within three months, made an arrangement so that the ship does not lose its right to carry the Danish colours. The auction is to be held after the same rules and with the same effect as execution sales.

**21.** When a share in a ship is sold, the acquirer of it enters, at the transfer, in relation to the other owners into all the rights and obligations of a part-owner. Like the transferor he is bound by all decisions taken by the owners or enterprises commenced previous to the transfer, with the obligations resulting therefrom, and his fellow-owners can set off against him the claims they in virtue of the business have against the transferor. As regards a third party, he is responsible as part-owner for all the engagements arising from the business which are subsequent to the transfer.

is conveyed to any person other than a co-owner, then any co-owner shall be entitled to redeem the share provided that he tenders the redemption money to the new owner, or, if the price of the purchase has not been fixed, sufficient security to cover it, within, at latest, the sixth working-day after the day when, in pursuance of the second section of § 21, notification of the transfer has been given. The amount payable in such a case shall, in the event of dispute arising, be fixed by an estimate, but never below the purchase price paid by the new owner. If, in such a case, the party be obliged to take legal proceedings in order to enforce his right, these must be undertaken within 3 months after the said notification has been given. If a part in a ship is sold by auction, the co-owners shall not be entitled to redeem such part, if, within 3 working days before the auction, the managing owner has received notification thereof. If several co-owners desire to exercise the power of redemption they shall be equally entitled to do so in proportion to their shares in the ship. If once the share has been repurchased by one of the co-owners, the other owners have not any further right of redemption in respect to the

If a part-owner ceases to be a Norwegian State citizen, and in consequence thereof, or else by inheritance, or marriage, the ownership of a share in a ship becomes vested in a foreign subject and the ship thus ceases to be a Norwegian ship, any co-owner shall be entitled to have such share sold by public auction, unless, within 3 months, the owner has taken proper measures to prevent the ship losing her right to carry the Norwegian flag. The auction shall be held according to the same rules, and have the same effect, as compulsory sales by auction.

**21.** On the transfer of a share in the ship, the new owner at once succeeds to all the rights and liabilities of a part-owner in relation to the co-owners. He shall be bound, in the same manner as the transferor, by all the decisions taken or operations commenced by the owners before the transfer, and all liabilities resulting therefrom, and the co-owners can bring as counter-claims against him all claims arising from their joint concern, which they have against the transferor. As regards third parties, the transferee shall be responsible as part-owner for all business liabilities incurred after the transfer.

Should there be several persons wishing to recover, they have the right to do so in proportion to the share in the ship owned by them severally.

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security to cover it, within, at latest, the sixth working-day after the day when, in pursuance of the second section of § 21, notification of the transfer has been given. The amount payable in such a case shall, in the event of dispute arising, be fixed by an estimate, but never below the purchase price paid by the new owner. If, in such a case, the party be obliged to take legal proceedings in order to enforce his right, these must be undertaken within 3 months after the said notification has been given. If a part in a ship is sold by auction, the co-owners shall not be entitled to redeem such part, if, within 3 working days before the auction, the managing owner has received notification thereof. If several co-owners desire to exercise the power of redemption they shall be equally entitled to do so in proportion to their shares in the ship. If once the share has been repurchased by one of the co-owners, the other owners have not any further right of sale of such share.

**21.** Should an owner transfer his share in a ship to a person not being a part-owner, the new owner shall immediately enter upon the rights and duties of an owner as far as concerns the other part-owners. Whatever the owners have legally done or decided, previous to such transfer, shall likewise be binding on the new owner. In case the transferor is in debt for contribution towards the maintenance of the business, the part-owners shall have the right, as regards the new owner, also to deduct such claim from the dividend due in respect of the transferred share in the ship. As regards a third party,

*To § 21.* Collective shipowning firms cannot as such be entered in the commercial register; this is of course otherwise when the shipowning firm has been established as a joint stock company.

Det paaligger Overdrageren at gøre Anmeldelse til den bestyrende Reder eller samtlige Medredere og at godtgøre, at den opgivne Erhverver vedkender sig Overdragelsen; saa længe dette ikke er sket, kan Overdrageren ikke over for Medrederne paaberaabe sig den stedfundne Overdragelse til Fritagelse for nogen af Rederiforholdet flydende Forpligtelse. Over for Tredjemand, der i god Tro har indladt sig med Rederiet, er han ansvarlig ogsaa for de efter Overdragelsen stiftede Rederiforpligtelser.

Det paaligger Overdrageren at gjøre Anmeldelse til den bestyrende Reder eller samtlige Medredere og at godtgjøre, at den opgivne Erhverver vedkjender sig Overdragelsen; saalænge dette ikke er skeet, kan Overdrageren ikke overfor Medrederne paaberaabe sig den stedfundne Overdragelse til Fritagelse for nogen af Rederiforholdet flydende Forpligtelse. Overfor Trediemand, der i god Tro har indladt sig med Rederiet, er han ansvarlig ogsaa for de efter Overdragelsen stiftede Rederiforpligtelser.

Det åligger öfverlåtaren att hos hufvudredaren eller hos samtlige medredarne göra anmälan om öfverlåtelsen och tillika styrka, att denna blifvit af nye egaren godkänd; innan sådan anmälan skett, ege öfverlåtaren icke mot medredarne åberopa den skedda öfverlåtelsen till sitt fredande från ansvarighet. Mot tredje man må öfverlåtelsen icke åberopas i annat fall, än då denne icke varit i god tro.

Är fartyget infördt i fartygsregistret, skall, efter det anmälan om öfverlåtelsen skett hos den myndighet, hvilken förer registret, samma myndighet ofördröjligen låta i allmänna tidningarne kungöra öfverlåtelsen. Sedan sådant kungörande skett, skall öfverlåtelsen anses hafva kommit till tredje mans kännedom, der ej af omständigheterna framgår, att han hvarken haft eller bort hafva kunskap derom.

22. Den eller de Partredere, som eje mere end en Halvpart i Skibet, kunne beslutte Rederiets Opløsning.

Enhver af Partrederne kan forlange Rederiet opløst:

1. Naar Skibet uden hans Skyld eller Samtykke mister Retten til at føre dansk Flag og derfor udslettes af Skibsregistret;

2. Naar den bestyrende Reder er bleven afskediget ved Rettens Kendelse i Medfør af § 14;

3. Naar han godtgør, at væsentlig Misholdelse af Rederikontrakten har fundet Sted, eller at hans Ret i øvrigt krænkes ved den Maade, hvorpaa Rederiets Anliggender forvaltes;

4. Naar det ved en Rejses Slutning her i Riget viser sig, at Rederiets Forpligtelser overstiger Rederiformuen.

22. Den eller de Partredere, som eier mere end en Halvpart i Skibet, kan beslutte Rederiets Opløsning.

Enhver af Partrederne kan forlange Rederiet opløst:

1. Naar Skibet uden hans Skyld eller Samtykke ophører at være norsk og derfor udslettes af Skibsregistret;

2. Naar den bestyrende Reder er bleven afskediget ved Rettens Kjendelse i Medfør af § 14;

3. Naar han godtgjør, at væsentlig Misholdelse af Rederikontrakten har fundet Sted, eller at hans Ret iøvrigt krænkes ved den Maade, hvorpaa Rederiets Anliggender forvaltes;

4. Naar det ved en Reises Slutning her i Riget viser sig, at Rederiets Forpligtelser overstiger Rederiformuen.

22. De redare, hvilka tillsammans ega mer än hälften i fartyget, må besluta, att fartyget skall försäljas och rederiet förty upplösas.

Der någon redare det yrkar, skall rederiet upplösas:

1. Om fartyget till följd af förändring i de förhållanden, i § omförmåler, utan redarens åtgärd eller samtycke upphört att vara svenskt och på grund deraf blifvit affördt ur fartygsregistret;

2. Om hufvudredaren blifvit genom domstols beslut skild från befattningen, såsom i 14 § sägs; eller

3. Om redaren kan visa, att rederiet förvaltas på sådant sätt, att hans rätt derigenom kränkes.

## Danish Text.

## Norwegian Text.

## Swedish Text.

It is the duty of the transferer to give notice to the manager, or to all the part-owners, and to prove that the transfer has been accepted by the acquirer whom he designates; as long as this is not the case, the transferer cannot, in relation to the other owners, invoke the transfer to withdraw from any duty resulting from the business. In relation to a third party, who in good faith has entered into business with the owners, he is responsible also for the obligations connected with the owners' business, which have been contracted after the transfer.

The transferor shall notify the transfer to the managing owner, or all the co-owners, and prove that the transfer has been effected and confirmed by the person stated to be the transferee. Before so doing he cannot claim to be released, by virtue of the transfer, from any liabilities towards the co-owners resulting from the part-ownership. For the claims of a third party who in good faith has had dealings with the owners, the transferor shall remain responsible even if they arise after the transfer of his share.

the public newspapers. When made, the transfer shall be the knowledge of the third party, unless he has neither had, nor had been able to receive, intelligence of the said transfer.

**22.** The owner or the owners possessing more than one half of the ship, may decide to dissolve the partnership.

Any of the partners may request that the partnership shall be dissolved:

1. If the vessel without his fault or consent loses its right to carry the Danish flag, and consequently is struck off the ship-register;
2. If the manager has been dismissed by judgment of the Court in conformity with § 14;
3. If he proves that an essential breach of the owners' contract has taken place, or that his rights are otherwise injured by the manner in which the affairs of the owners are conducted;
4. If it appears at the completion of a voyage in the Monarchy, that the obligations of the owners exceed their fortune.

**22.** Any part-owner or part-owners holding more than one moiety of the ship may decide that the part-ownership shall be dissolved.

Any part-owner shall have the right to demand the dissolution of the part-ownership:

1. If, without his consent or any fault on his part, the ship ceases to be a Norwegian ship, and is accordingly struck off the Register;
2. If the managing owner has been dismissed by the decision of a court of law in virtue of § 14;
3. If the owner proves that a material infringement of the agreement with the part-owners has taken place, or that his rights have been otherwise violated by the manner in which the affairs of the concern have been conducted;
4. If, at the end of a voyage in this Kingdom, the liabilities of the concern are proved to exceed its assets.

the new owner in his capacity of shipowner shall be responsible for the engagements entered into by the owners subsequent to the transfer.

It shall be the duty of the transferor to notify the transfer either to the managing owner or to all the part-owners and likewise to prove that the transfer has been accepted by the new owner; before such notice has been given, the transferor cannot as regards his co-owners plead irresponsibility by reason of the transfer. As regards a third party the conditions of the transfer cannot be pleaded except in case such party has not been acting in good faith.

If the ship is entered in the Register of ships, the authority keeping such Register shall immediately on receipt of notice of the said transfer cause the same to be advertised in such announcement has been considered to have come to party, unless circumstances nor had been able to receive,

**22.** Owners who together own more than one half of the ship, may decide to sell the ship and thus dissolve the partnership.

At the express desire of any owner the partnership shall be dissolved in the following cases:

1. If the vessel on account of any change of the circumstances referred to in Art. 1 without any action or consent of the owner has ceased to be a Swedish ship and consequently been struck off the register of ships;
2. If the managing owner by order of any Court has been dismissed from his office in pursuance of Art. 14; or
3. If any owner can prove that the business of the owners has been conducted in such a manner as to injure his rights.

Er der i sidste Tilfælde Meningsforskel om Skibets Værdi, bestemmes denne ved lovligt Skøn.

Er der i sidste Tilfælde Meningsforskel om Skibets Værdi, bestemmes denne ved lovligt Skjøn.

23. Naar Rederiet opløses, skal Skibet sælges ved offentlig Auktion. Er Skibet i Udlandet, og der tvistes, om det skal føres hjem, eller er der Uenighed om Konditionerne, træffes Afgørelsen af Auktionsretten paa Rederiets Hjemsted.

23. Naar Rederiet opløses, skal Skibet sælges ved offentlig Auktion. Er Skibet i Udlandet, og der tvistes, om det skal føres hjem, eller er der Uenighed om Vilkaarene, træffes Afgjørelsen af Retten.

23. Vid rederis applösning skall fartygets försäljning ske å offentlig auktion. Kunna ej redarne enas om orten, der auktionen skall ega rum, eller om villkoren för försäljningen, skall tvisten afgöras af skiljemän.

### Tredje Kapitel.

#### Om Skipperen.

24. Skipperen antages af Rederiet eller paa dets Vegne af den bestyrende Reder. Den, der ejer mere end en Halvpart i Skibet, er berettiget til at overtage dets Forelse, hvis han fyldstgjør Lovens Betingelser; er der Uenighed om Lønningsvilkaarene, kan Sagen forelægges Retten til Afgørelse.

25. Skipperen antager og afskediger Skibsmandskabet. Han maa ikke tage nogen i Tjeneste, som han vitterligt allerede er forhyret af en anden.

26. Skipperen har, inden Rejsen tiltrædes, at paase, at Skibet er i sodygtig Stand, og maa i betimelig Tid sørge for, at det er behørig udrustet, tilstrækkelig bemanded og forsvarlig for-

### Tredie Kapitel.

#### Om Skibsføreren.

24. Skibsføreren antages af Rederiet eller paa dets Vegne af den bestyrende Reder. Den, der ejer mere end Halvparten i Skibet, er berettiget til at overtage dets Forelse, hvis han fyldstgjør Lovens Betingelser; er der Uenighed om Lønningsvilkaarene, kan Sagen forelægges Retten til Afgjørelse.

25. Skibsføreren antager og afskediger Skibsmandskabet. Han maa ikke tage Nogen i Tjeneste, som han vitterligt allerede er forhyret af en Anden.

26. Skibsføreren skal, inden Reisen tiltrædes, paase, at Skibet er i sjødygtig Stand, og i betimelig Tid sørge for, at det er behørig udrustet, tilstrækkelig bemanded og forsvarlig for-

### Tredje kapitlet.

#### Om fartygs befälhafvare.

24. Redare, som har större del i fartyget än hälften, ege rätt att öfvertaga fartygets förande, om han dertill är behörig; kan ej öfverenskommelse träffas om lönevillkoren, skola dessa bestämmas af skiljemän.

25. Befälhafvaren ege antaga och afskeda besättningen. Han må icke i tjenst antaga någon för tid, under hvilken denne, befälhafvaren veterligen, är förbunden att tjäna å annat fartyg.

26. Befälhafvaren skall, innan resa anträdes, tillse, att fartyget är i sjövärdigt skick för resan, behörigen utrustadt och bemannadt så ock tillräckligen försedd med proviant, vat-

ad § 23 og 24 *et passim* S. Ang. Skiljemän jfr. § 331.

ad § 24 D. Betingelserne for at fare som Skipper er fastsatte ved Søneringsloven (Nr. 40) af 25 Marts 1892, §§ 1, 2, 9 (jfr. Lov Nr. 75, 1895), 10, 16 jfr. §§ 19—21 (jfr. Cirkul. Nr. 23, 1894), og Bekjendtgjørelse Nr. 144, 1901 om Synsproven.

N. Virksomhed som Skipper i udenlandsk Fart er betinget af Løsning af Skipperborger-skab, og dette er igjen betinget af Skippereertifikat; Vilkaarene for at erholde dette er fastsatte ved Lov af 7 April 1906 om Adgang til at føre Fartøi og at blive Styrmand samt om Navigationsexamen, §§ 3 og 4.

S. Jfr. den kongelige Forordning af 22 November 1878 om Befalet paa de svenske Handelsfartøier med senere Ændringer ved Forordningerne af 6 August 1880, 20 Januar 1882 og 7 November 1890 og det kgl. Reglement for Navigationsskolerne i Riget af 6 Juni 1890

ad § 26 D. Jfr. særlig Regl. 10 Decbr. 1892, Bkg. 15 Juli 1898 og Regl. 1 Juli 1908 ang. Skibsmandskabets Forplejning og Opholdsrum ombord, Bkg. 13 April 1893 ang. Skibes Forsyning med Lægemidler, Bkg. 13 Marts 1902 ang. danske Skibes Lanterner samt Lyd-Signalapparater, Lov 13 Febr. 1903 om Tilsyn med Dampfartøier m. m. med dertil hørende Bekjendtgjørelser, Anordn. 30 Decbr. 1903 ang. Indladning af Sprængstoffer m. m. i Skibe, Midlertidig Lov 14 Maj 1909 om Skibes Dybgående og Lastelinie, jfr. Adg. 28 Sept. 1909 og Bkg. 30 Sept. 1909, Lov 14 Maj 1909 om Tilsyn med Sejlskibe m. m. med dertil hørende Bekjendtgjørelser, Adg. 28 Maj 1909 om Calenus Carbid- Indladning i Skibe, Bekjendtgjørelse af 13. Marts 1909

## Danish Text.

Should, in the last case, the opinions differ as to the value of the ship, the latter must be determined by a legal survey.

23. In case the ownership is dissolved, the ship is to be sold at a public auction. If the ship is abroad and there should be any disagreement as to the question if it ought to be brought home or as to the conditions, the Court which at the place of residence of the owners is to hold the auction, must decide in the matter.

## Chapter III.

## Of the Master.

24. The master is to be engaged by the owners or by the manager on their behalf. Any person holding a larger share in the ship than one half has the right to take the command of it, if he fulfils the conditions of the law; in case of disagreement as to the terms of his salary, the matter can be brought before the Court to be settled.

25. The master engages and discharges the crew. He must not engage anybody who to his knowledge is already engaged by another.

26. The master shall, before proceeding on his voyage, see that the vessel is in a seaworthy condition, and shall in good time take care that it is properly equipped, sufficiently

## Norwegian Text.

If in the last named case there should be a difference of opinion as to the value of the ship, the same shall be fixed by an estimate according to law.

23. When a dissolution of the part-ownership is to take place, the ship shall be sold by public auction. If the ship is in a foreign country, and the owners disagree as to whether it ought to be brought home, or as to the conditions of sale, the matter shall be decided by the Court.

## Chapter III.

## The Master.

24. The right of appointing the master belongs to the owners, or, on their behalf, to the managing owner. Any owner of more than one moiety of the ship shall be entitled to take the command thereof, if so qualified as required by law. If the parties disagree as to the wages, the question may be submitted to the Court for settlement.

25. The master has to engage and discharge the crew. He must not engage any person whom he knows is already hired by another party.

26. Before commencing the voyage the master shall see that the ship is in a seaworthy condition, and he must take timely measures to have the ship properly equipped, suffi-

## Swedish Text.

23. When the ownership is to be dissolved, the ship shall be sold by public auction. If the owners cannot agree as to the place where the auction is to be held or as to the conditions of the sale, the matter in dispute shall be settled by arbitration.

## Chapter III.

## Masters.

24. Any owner holding a larger share in a ship than one half shall have the right to command her, should he otherwise be duly qualified. The terms of his wages, in case an agreement cannot be arrived at, shall be settled by arbitration.

25. The master shall engage and discharge the crew. No person is to be engaged for any period during which, to the knowledge of the master, he is bound to serve on board any other ship.

26. The master shall, before proceeding to sea, take care that the ship is in sea-worthy condition for the voyage, properly equipped and manned, and has on board a sufficient

*To § 23 and 24 et passim S. Concerning arbitrators cf. § 331.*

*To § 24 D.* The conditions required for exercising the calling of a shipmaster are regulated by the Maritime Trade Law (No. 40) of 25th March 1892, §§ 1, 2, 9 (cf. Law No. 75, 1895), 10, 16 cf. §§ 19—21 (cf. Circular No. 23, 1894), and the Publication No. 144, 1901, concerning navigation examinations.

*N.* The profession of a shipmaster engaged in trade with foreign countries is subject to obtaining a license as a master, and this depends on the possession of a master's certificate; the conditions on which such a certificate can be obtained are fixed by the Law of 7 April 1906 concerning the right to command a vessel and to become first mate and concerning the navigation examination, §§ 3 and 4.

*S.* Cf. the Royal Ordinance of 22nd November 1878 concerning the command on board Swedish trading vessels, with subsequent modifications made by the Ordinances of 6th Aug. 1880, 20th January 1882 and 7th November 1890, and the Royal Regulation for the navigation schools of the Kingdom of 6th June 1890.

*To § 26 D.* Cf. notably the Regulation of 10th Dec. 1892, the Publication of 15th July 1898 and the Regulation of 1st July 1908, concerning the victualling and accommodation of the crew on board, the Publication of 13th April 1893 concerning the ship's supply of medicine, the Publication of 13th March 1902 concerning the lights and sound signal apparatus of Danish vessels, Law of 13th Feb. 1903 concerning the supervision of steamships etc., with the Publications appertaining to it, the Ordinance of 30th Dec. 1903 concerning the loading of explosives etc. on board, the Temporary Law of 14th May 1909 concerning the draught of water and water line of vessels, cf. the Ordinance of 28th Sep. 1909 and the Publication of 30th Sep.

## Dansk Text.

synet med Proviant, Vand og Lægemidler samt med Kul og andre Maskinfornodenheder, dersom det er Dampskib. Han er ligeledes pligtig at sørge for, at reglementerede Signalapparater og Bjærgningsredskaber findes om Bord, saavel som nødvendige Sokort og Instrumenter.

## Norsk Text.

synet med Proviant, Vand og Lægemidler samt med Kul og andre Maskinfornodenheder, dersom det er Dampskib. Han skal ligeledes sørge for, at reglementerede Signalapparater og Bjærgningsredskaber saavel som nødvendige Sjøkarter og Instrumenter findes ombord.

## Svensk text.

ten, läkemedel samt, der fartyget är ångfartyg, med kol och öfriga för maskinens drift nödiga ämnen, äfvensom att nödiga signalapparater, bergningsredskap, sjökort och nautiska instrument finnas om bord.

Han skal paase, at Skibet ikke overlastes, at Ladningen behørig staves, og at til dens Betryggelse Skibet er forsynet med nødvendig Garnering. Underlag, Skotter, Stotter o. s. v., samt at Lugerne forsvarlig lukkes og skalkes. Kan Dækslast føres, bør den forsvarlig sikres og anbringes saaledes, at den ikke i væsentlig Grad vanskeliggjør Skibets Manøvrering. Gaar Skibet i Ballast, har Skipperen at paase, at den er tilstrækkelig og af forsvarlig Beskaffenhed, samt at den sikres saaledes, at den ikke kan forskyde sig under Rejsen.

Han skal paase, at Skibet ikke overlastes, at Ladningen behørig staves, og at Skibet til dens Betryggelse er forsynet med nødvendig Garnering. Underlag, Skotter, Stotter o. s. v., samt at Lugerne forsvarlig lukkes og skalkes. Kan Dækslast føres, bør den forsvarlig sikres og anbringes saaledes, at den ikke i væsentlig Grad vanskeliggjør Skibets Manøvrering. Gaar Skibet i Ballast, skal Skibsføreren paase, at den er tilstrækkelig og af forsvarlig Beskaffenhed, samt at den sikres saaledes, at den ikke kan forskyde sig under Reisen.

Honom åligge oek tillse, att ej större last intages, än fartyget kan bekvämligen bära och rymma, att gods, som inlastas, behöri-gen stufvas, att fartyget är försedt med allt hvad till lastens betryggande erfordras, såsom garnering, stötter, underlag och skott, samt att skeppsluckorna behöri-gen tillslutas och skalkas. Kan däckslast lämpli-gen föras, bör den vara försedd med stötter och så anbragt, att den icke väsentli-gen försvårar fartygets manövrering. Går fartyget i ballast, har befälhafvaren att tillse, det ballasten är lämplig och tillräcklig samt så anbragt, att den icke må förskjuta sig under resan.

#### Nærmere Forskrifter og Regler for Skibes Forsyning med

#### Nærmere Regler for Skibets Udrustning, Forsyning og Last-

om de Skibsførerne paahvilende Pligter med Hensyn til Førelsen af Skibsdagbogen, Bekjendtgørelse af 29. Septbr. 1909 angaaende Seilfartøiers Forsyning med Redningsbaater, Bekjendtgørelse af 8. Decbr. 1909 om Indretning m. m. af Tilsynsbog for Seilskibe, Bekjendtgørelse af 13. Decbr. 1909 om Indretning m. m. af Deviationsbog for Seilskibe, Bekjendtgørelse af 24. Februar 1910 angaaende nærmere Forskrifter for Tilsynet med Dampfartøier m. m. og af 25. Februar 1910 angaaende nærmere Forskrifter for Tilsynet med Motorfartøier.

N. De vigtigste Bestemmelser er her de af 12 Oktbr. 1894 (med Tillægsbestemmelser af 27 Marts og 30 Oktbr. 1897) om Medicinforraad ombord paa norske Skibe samt Kostholdsreglement for den norske Handelsflaade af 24 Novbr. 1905 tilligemed Plakat af 16 Marts 1910, indeholdende Regler til Forebyggelse af Sammenstød mellem Fartøier samt om Signaler før Havsnød. Videre maa her gjøres opmærksom paa Lov af 9 Juni 1903 om Statskontrol med Skibes Sjudygtighed, som ifølge kgl. Res. af 21 Marts 1906 er traadt i Kraft fra 1 Mai s. A., med Tillægslove af 8 August 1908 og 18 September 1909.

S. Se kgl. Förordn. ang. hvad i afseende å passagerarångfartygs byggnad, utrustning och begagnande iakttagas bör, af 12 Febr. 1864, kgl. Förordn. ang. de räddningsinrättningar och eldsläckningsredskap, hvilka ångfartyg under resor med passagerare skola medföra, af 1 Juli 1898; ang. Udvandringsfartøier se kgl. Förordn. af 4 Juni 1884. Jfr. särskilda förskrifter med afseende å fartyg i Nordsjöfart i kgl. förordn. av. 13. Juli 1909, Provisoriska förskrifter ang. lastemärke (fribordsmärke) i kgl. förordn. af 21. Mai 1910, kgl. förordn. ang. åtgärder mot införande och utbredning af smittosamma sjukdomar bland rikets invånare af 19. Mars 1875, kgl. handgörelse ang. förändrade föreskrifter til förekommande af pestens och koleras införande i riket af 16. Juni 1905, ang. införsel af varor, som kunna misstänkas medföra pest- eller kolerasmitta af 4. Juli 1910, ang. hvad iakttages bör till förekommande af smittosamma hälsdjursjukdomars införande i riket af 9. Decbr. 1890 med tilläg ang. mul- och klovsjuka af 6. Aug. 1908 och ang. utförsel til utlandet af kreatur af 29. Novbr. 1906.



## Danish Text.

manned, and has on board a sufficient quantity of provisions, water and medicine, as well as coal and other materials requisite for the working of the engines, if a steamer. It is also his duty to take care that the prescribed signal and life saving apparatus be found on board, as well as the necessary charts and instruments.

He shall also take care that the ship is not overloaded, that the cargo is properly stowed and that the ship, to secure the cargo, is provided with a proper ceiling, dunnage, bulkheads, stanchions a. s. o., and that the hatches are properly put down and caulked. If a deck cargo can be carried, it should be properly secured and stowed so as not to interfere essentially with the navigation of the ship. The master must see, if the ship is in ballast, that the latter is sufficient and of suitable quality and so stowed as not to shift during the voyage.

Further instructions and regulations concerning the ship's

## Norwegian Text.

ciently manned, and well provided with provisions, water, and medical stores, and, if it is a steamship, with coal and other requisites for the engines. He shall also see that the regulation signal and life-saving gear, and the necessary charts and instruments, are on board.

He shall see that the ship is not overloaded, that the cargo is properly stowed, and that, for its security, the ship is furnished with proper ceilings, dunnage, bulkheads, pillars etc., and that the hatches are properly closed and battened down. If deck cargo can be carried it must be carefully secured and so arranged as not to impede to any material extent the working of the ship. If the ship is in ballast, the master shall see that the ballast is sufficient and of a safe kind, and so well secured that it cannot shift during the voyage.

Further instructions may be issued by the King concerning

## Swedish Text.

quantity of provisions, water and medicine, and also, in case of steamers, of coals and other materials requisite for the working of the engines, and further that the necessary signal and life saving apparatuses, charts and nautical instruments be found on board.

It shall also be his duty to see that no more cargo is taken on board than the ship can conveniently hold and carry, that goods received on board are properly stowed, that the ship is provided with all means for securing the cargo, such as ceiling, stanchions, stowage and shifting boards and that the hatches are properly put down and caulked. If a deck cargo can conveniently be carried, it should be provided with stanchions and so stowed as not to interfere with the navigation of the ship. If in ballast, the master shall see that the ballast is suitable and sufficient, and stowed so as not to shift during the voyage.

1909, the Law of 14th May 1909 regarding the supervision of sailing vessels etc. with the Publications appertaining to it, the Ordinance of 28th May 1909 concerning the loading in ships of calcium carbide, the Publication of 13th March 1909 concerning the obligations incumbent on shipmasters with regard to the keeping of ships' journals, the Publication of 29th Sep. 1909 concerning the equipment of sailing vessels with life boats, the Publication of 8th Dec. 1909 concerning the establishment etc. of a control book for sailing vessels, the Publication of 13th Dec. 1909 concerning the establishment etc. of a deviation book for sailing vessels, the Publication of 24th February 1910 concerning detailed regulations as to the supervision of steamships etc., and of 25th February 1910 concerning the particulars of the regulations for the supervision of motor boats.

N. The most important Regulations on this subject are those of 12th Oct. 1894 (with supplementary Regulations of 27th March and 30th Oct. 1897) concerning the supply of medicine on board Norwegian vessels and the Regulation concerning the victuals of the Norwegian mercantile marine of 24th Nov. 1905, together with the Placard of 16th March 1910 containing rules concerning the prevention of collisions between vessels and concerning signals in case of distress at sea. In addition, attention must here be called to the Law of 9th June 1903 concerning the State control of the seaworthiness of vessels at sea, which according to the Royal Resolution of 21st March 1906 has come into force from 1st May of the same year, with supplementary Laws of 8th August 1908 and 18th Sept. 1909.

S. See the Royal Ordinance of 12th Feb. 1864 in regard to the regulations concerning the building, equipment and employment of passenger steamers, the Royal Ordinance of 1st July 1898 concerning the salvage and fire extinguishing apparatus which steamers must be provided with when transporting passengers; see the Royal Ordinance of 4th July 1881 concerning emigrant boats.

Cf. special regulations of the Royal Ordinance of 13th July 1909 with regard to vessels sailing in the North Sea, provisional regulations concerning the water line (mark of free board) in the Royal Ordinance of 21st May 1910, the Royal Ordinance concerning measures against the importation and diffusion of contagious diseases amongst the inhabitants of the Kingdom of 19th March 1875, the Royal Publication concerning the modified regulations with a view to preventing the importation of plague and cholera into the Kingdom of 16th June 1905, concerning the import of goods which may be suspected of carrying with them bacillus of plague or cholera of 4th July 1910, concerning what ought to be observed for the prevention of the importation of contagious skin diseases into the Kingdom of 9th Dec. 1890, with Supplement concerning foot and mouth disease of 6th August 1908, and concerning the exportation of cattle to foreign countries of 29th Nov. 1906.

Lagemidler, saa og for Indladning og Medtagelse af Sprængstoffer og ildsfarlige eller ætsende Varer gives af Kongen, og Skipperen er ansvarlig for deres Overholdelse.

ning saavel som for Indladning og Medtagelse af Sprængstoffer og ildsfarlige eller ætsende Varer samt om Kontrollen dermed gives af Kongen. For deres Overholdelse er Skibsføreren ansvarlig.

Ved de i foranstaaende Stykke ommeldte Forskrifter og Regler for Indladning og Medtagelse af Sprængstoffer og ildsfarlige eller ætsende Varer skal der tillige kunne træffes Bestemmelse med Hensyn til Losning af saadanne Stoffer og Varer, ligesom der skal kunne gives de paagældende Forskrifter og Regler Anvendelse ogsaa paa Skibe, der ikke ere hjemmehørende her i Riget, saa længe de befinde sig paa dansk Soteritorium. (*Sidste Led: Lov af 14. Decbr. 1903.*)

27. Skipperen skal have om Bord alle fornødne Skibspapirer, saa og et Eksempplar af denne Lov og af de Reglementer og Forskrifter, som i Henhold til samme maatte være udfærdigede.

28. Uden Rederens Samtykke maa Skipperen ikke i sin Kahyt eller andet Rum, som ikke er bestemt til Last, for egen eller andres Regning medtage Handelsvarer. Gør han det, er han pligtig at betale Rederen gangbar Fragt for Godset og at erstatte ham al forvoldt Skade.

29. Skipperen maa ikke forlade Skibet uden at give Styrmanden eller, hvis denne ikke er til Stede, en anden af Mandskabet fornøden Underretning og Ordre. Naar Skibet ikke er fortojet i Havn eller til Ankers paa sikker Ankersplads, maa Skipperen, selv om der er Lods om Bord, ikke uden Nødvendighed være fraværende fra Skibet. Det samme gælder overhovedet under farefulde Omstændigheder.

30. Bliver Skipperen ved Sygdom eller anden tvingende Aarsag forhindret fra at føre Skibet, bør Rederen derom uopholdelig underrettes. Kan Re-

27. Skibsføreren skal have ombord alle fornødne Skibspapirer samt et Eksempplar af denne Lov og af de i Henhold til samme udfærdigede Reglementer.

28. Uden Rederens Samtykke maa Skibsføreren ikke i sin Kahyt eller andet Rum, som ikke er bestemt til Last, for egen eller Andres Regning medtage Handelsvarer. Gjør han det, er han pligtig at betale Rederen gangbar Fragt for Godset og at erstatte ham al forvoldt Skade.

29. Skibsføreren maa ikke forlade Skibet uden at give Styrmanden eller, hvis denne ikke er tilstede, en anden af Mandskabet fornøden Underretning og Ordre. Naar Skibet ikke er fortojet i Havn eller til ankers paa sikker Ankerplads, maa Skibsføreren, selv om der er Lods ombord, ikke uden Nødvendighed være fraværende fra Skibet. Det samme gælder overhovedet under farefulde Omstændigheder.

30. Bliver Skibsføreren ved Sygdom eller anden tvingende Aarsag forhindret fra at føre Skibet, bør Rederen uopholdelig underrettes derom. Kan Re-

27 Befälhafvaren skall hafva ombord å fartyget alla nödiga skeppshandlingar äfvensom ett exemplar af denna lag och af den för besättningar å svenska handelsfartyg fastställda spisordning.

28. Utan redarens samtycke må befälhafvaren icke i kajutan eller i andra rum, hvilka icke äro afsedda för last, medtaga handelsvaror för egen eller annans räkning: sker det, skall befälhafvaren erlägga frakt för godset samt, efter pröfning af skiljemän, ersätta den skada och förlust, som må hafva tillskyndats redaren.

29. Befälhafvaren må icke lemna fartyget utan att gifva styrmannen eller, om denne icke är tillstädes, annan af besättningen nödig underrättelse och föreskrift. När fartyget icke ligger förtöjdt i hamn eller eljest å säker ankarplats, må befälhafvaren icke, utan att sådant är nödvändigt, lemna fartyget, äfven om lots är ombord; är fara för hand, må han icke vara borta från fartyget.

30. Nödgas befälhafvaren af sjukdom eller annan tvingande anledning att under resa lemna tjensten, bör redaren derom ofördröjligen underrättas. Kan

## Danish Text.

supply of medicine, as well as regarding the loading and transport of explosive matter, inflammable goods or caustics are given by the King, and the master has the responsibility for these being carried into effect.

The instructions and regulations concerning the loading and transport of explosive matter, inflammable goods or caustics mentioned in the preceding paragraph may also regulate the unloading of such explosives and goods, and the instructions and regulations in question may also be made applicable to vessels not having their home port in this Kingdom as long as they navigate in Danish maritime waters. (*The last par. has been added by the Law of 14th Dec. 1903.*)

**27.** The master shall have on board all the requisite ship's documents, as well as a copy of the present Law and of the regulations and instructions pursuant to this Law.

**28.** Without the owner's consent the master is not allowed to receive merchandise for his own or any other person's account in his cabin or any other part of the ship not intended for cargo. If he does, he is bound to pay the current freight for the goods to the owner, and indemnify him for all the damage which may have been caused.

**29.** The master must not leave the ship without giving the mate, or, should he be absent, some other man of the crew, the necessary information and directions. If the ship is not moored in port or secured in a safe anchorage, the master must not, unless it be necessary, leave the ship, even if a pilot should be on board. This is equally his duty under dangerous circumstances.

**30.** In case the master should be obliged to resign the command of the ship on account of illness or any other cogent reason, the owner should

## Norwegian Text.

the fitting out and equipment of ships and their loading, likewise respecting the loading and carrying of explosive, inflammable, and corrosive substances, and the supervision to be exercised in respect thereto. The master shall be held responsible for the strict observance of such instructions.

**27.** The Master shall have on board all necessary ship's papers, and a copy of this Law, and of such instructions as may be issued in virtue thereof.

**28.** The Master must not, without the consent of the owners, carry merchandise on his own or another's account in his cabin or other space not destined for cargo. Should he do so he shall be liable to pay to the owners the current freight for such goods, and to compensate them for any other loss sustained.

**29.** The master must not leave the ship without giving all necessary instructions to the mate, or, in his absence, to another member of the crew. If the ship is not moored in a harbour, or anchored in a safe anchorage, the master must not, without necessity, leave the ship, even if there is a pilot on board. This rule shall apply, generally, under all dangerous circumstances.

**30.** If the master is prevented from commanding the ship by sickness, or other urgent reasons, he shall immediately give notice thereof to

## Swedish Text.

**27.** The master shall have on board the ship all the requisite ship's documents, as well as a copy of this present Law and of the scale of provisions sanctioned for Swedish merchant ships.

**28.** The master may not, without the consent of the owner, receive and carry merchandise for his own or any other person's account in the cabin or any other space not intended for cargo; if he should do so, freight shall be paid for the same, in addition to which he shall have to compensate the owners for any damage or loss they may have suffered upon due examination by arbitrators.

**29.** The master may not leave the ship without giving the mate, or should he be absent, some other member of the crew, necessary information and directions. When the ship is not moored in a harbour or otherwise secured in a safe anchorage, the master may not leave the ship unless it be necessary, even should a pilot be on board; should any danger exist, the master may not be absent from the ship.

**30.** In case the master should be obliged to leave the service during a voyage from illness or some other valid reason, the owner should

derens Bestemmelse ikke uden Skade afventes, paaligger det Skipperen, i Udlandet saa vidt muligt efter Overlæg med Konsulen, at træffe Foranstaltninger, navnlig ved at antage Styrmanden eller en anden kyndig Mand til midlertidig at fore Skibet. Er Skipperen ude af Stand til, eller undlader han at udføre, hvad der saaledes paaligger ham, har Konsulen at foretage det fornødne.

31. Skipperen har at sørge for, at Lastning og Losning behørig paaskyndes, og at Skibets Afreise derefter ikke forhales. Under Rejsen maa han ikke uden Nødvendighed afvige fra rette Vej eller paa anden Maade gøre Ophold, naar det ikke sker for at komme Mennesker i Havsnød til Hjælp. For at bjerger andet Skib eller Gods maa intet Ophold gores, naar Bjergningen ikke kan finde Sted uden Risiko for Skibet og uden væsentlig Ulempe for Rederen eller andre, hvis Interesser det er Skipperens Pligt at varetage.

32. Skipperen har under Rejsen at gøre, hvad der staar i hans Magt for at holde Skibet i sodygtig Stand. Har Skibet grundstødt, eller hvis ellers nogen Begivenhed er indtruffet, hvoraf Skade kan antages at være opstaaet, paaligger det Skipperen at foranstalte Undersøgelse paa første Sted, hvor saadan kan foretages.

33. Det paaligger Skipperen at gøre sig bekendt med de Skibsfarten vedrørende Paabud og Forskrifter, der ere at iagttage paa de Steder, som han paa Rejsen skal anløbe. Ligesaa bør han i Tilfælde af Krig eller Blokade skaffe sig Underretning om, hvad der er at iagttage til Sikkerhed for Skib og Ladning.

derens Bestemmelse ikke uden Skade afventes, paaligger det Skibsføreren, i Udlandetsaa vidt muligt efter Overlæg med Konsulen, at træffe Foranstaltninger, navnlig ved at antage Styrmanden eller en anden kyndig Mand til midlertidig at fore Skibet. Er Skibsføreren ude af Stand til eller undlader han at udføre, hvad der saaledes paaligger ham, har Konsulen at foretage det fornødne.

31. Skibsføreren skal sørge for, at Lastning og Losning behørig paaskyndes, og at Skibets Afreise derefter ikke forhales. Under Rejsen maa han ikke uden Nødvendighed afvige fra rette Vei eller paa anden Maade gjøre Ophold, naar det ikke sker for at komme Mennesker i Havsnød til Hjælp. For at berge andet Skib eller Gods maa intet Ophold gjøres, medmindre Bergningen kan finde Sted uden Risiko for Skibet og uden væsentlig Ulempe for Rederen eller Andre, hvis Interesser det er Skibsførerens Pligt at varetage.

32. Skibsføreren har under Rejsen at gøre, hvad der staar i hans Magt for at holde Skibet i sjodygtig Stand. Har Skibet grundstødt, eller er nogen anden Begivenhed indtruffen, hvoraf Skade kan antages at være opstaaet, paaligger det Skibsføreren at foranstalte Undersøgelse paa første Sted, hvor saadan kan foretages.

33. Det paaligger Skibsføreren at gøre sig bekendt med de Skibsfarten vedrørende Paabud og Forskrifter, der er at iagttage paa de Steder, som han skal anløbe paa Rejsen. Ligesaa bør han i Tilfælde af Krig eller Blokade skaffe sig Underretning om, hvad der er at iagttage til Sikkerhed for Skib og Ladning.

icke redarens föreskrift utan olägenhet afvaktas, åligge befälhafvaren att, å utrikes ort så vida ske kan efter rådpläging med svensk konsul, uppdraga åt styrmannen eller annan skicklig och pålitlig man att tills vidare föra fartyget. Öfvergifver befälhafvaren fartyget eller kan han icke, när han måste lemna befälet, vidtaga anordning för resans fortsättande, ege å utrikes ort konsul förordna befälhafvare.

31. Befälhafvaren skall tillse, att lastning och lossning behörigen fortskyndas och att fartygets afresa, sedan last inlagtts eller lossats, icke fördröjes. Under resa må han icke utan nödtvång afvika från vanlig väg eller göra uppehåll, der det icke sker för att bispjunga menniskor, som äro stadda i sjönöd; allenast för bergande af annat fartyg eller af gods må uppehåll icke göras, der icke bergningen kan utföras utan äfventyr för fartyget och utan märkligt men för redare eller annan, hvars rätt och bästa det tillhör befälhafvaren att bevaka.

32. Befälhafvaren skall under resa göra hvad i hans magt står för att hålla fartyget i sjövärdigt skick. Har fartyget grundstött eller har eljest någon händelse inträffat, hvaraf skada kan antagas hafva uppstått, åligge befälhafvaren att, så snart fartyget anländt till ort, der undersökning kan ega rum, derom föga anstalt.

33. Befälhafvaren åligge att göra sig underrättad om de, skeppsfarten rörande, påbud och föreskrifter, som äro gällande å de orter, hvilka han under resan skall anlöpa. I händelse af krig eller blokad bör han söka upplysning om hvad han till fartygets och lastens säkerhet har att iakttaga.

## Danish Text.

be informed of this without delay. Should it be impossible to await the arrival of the owner's instructions without inconvenience, the master must, when in a foreign country, if possible, after having consulted the Consul, take the necessary measures, especially by engaging the mate or some other competent person temporarily to take the command of the vessel. Should the master be unable to, or fail to do his duty, the Consul must do all that is necessary.

31. The master shall see that the loading and discharging of the ship are effected without delay and that subsequently the departure of the ship is not retarded. During the voyage he must not, unless it be necessary, deviate from the direct route, nor in any other way detain the ship, except to render assistance to persons in distress. No delay must be incurred in saving another ship or goods, unless the salvage can be performed without risk for the ship and without any appreciable detriment to the owners or any other person whose interest it is the master's duty to protect.

32. During the voyage the master has to do everything in his power to keep the ship in seaworthy condition. If the ship has struck the ground or otherwise met with a casualty, whereby damage may be supposed to have been caused, it is the duty of the master to cause a survey to be made at the first place where it can be effected.

33. It is the master's duty to make himself acquainted with the regulations and provisions regarding the navigation which are to be observed in the ports at which he is to call during the voyage. In case of war or blockade, he should also try to obtain information as to what is to be observed for the safety of ship and cargo.

## Norwegian Text.

the owners. If the decision of the owners cannot be awaited without detriment, the master shall, when abroad, if possible in concert with the Consul, take proper measures to appoint the mate or another reliable seaman, to the provisional command of the ship. If the master is unable to perform such duty, or if he omits to do so, the Consul shall take the measures required.

31. The master shall see that due progress is made in loading and unloading, and that the departure of the ship thereafter is not delayed. During the voyage he must not without necessity deviate from the straight course, or in any other manner make any delay, except for the purpose of assisting persons in distress at sea. No delay must be made in order to save other ships or goods, unless this can be effected without risk to the ship or material inconvenience to the owners, or others, the interests of whom the master is bound to protect.

32. The master shall, during the voyage, take all measures within his power to keep the ship in a seaworthy condition. If the ship has grounded, or if any other occurrence has taken place by which damage is supposed to have been caused, the master shall cause a survey to be held at the first place where it can be made.

33. The master shall make himself acquainted with the instructions and regulations in force concerning shipping and navigation which are to be observed at those places he shall touch at during the voyage. In the event of war, or blockade, he ought to procure information as to what he is to observe for the security of the ship and cargo.

## Swedish Text.

be informed without delay. Should it be impossible to await the arrival of the owner's instructions, without incurring inconvenience, the master shall, when in a foreign port, if possible after duly consulting the Swedish Consul, request the mate or any other competent and reliable person temporarily to take charge of the ship. Should the master, when in a foreign port, abandon his ship, or should he be unable to take the necessary measures for the continuance of the voyage, when obliged to leave the command, the Consul shall appoint a master.

31. The master shall see that the loading and discharging is effected without delay, and that the departure of the ship is not retarded after the cargo has been loaded or discharged. During the voyage the master may not deviate from the ordinary route, unless forced by circumstances, nor detain the ship except to render assistance to persons in distress; for the salvage of another ship or of goods only, delay should not be incurred, except where the salvage can be performed without endangering the ship and without any appreciable detriment to owners or any other person whose rights and interests it is the master's duty to protect.

32. During the voyage, the master shall do everything in his power to keep the ship in sea-worthy condition. If the ship has stranded or otherwise met with a casualty, whereby damage may be supposed to have been sustained, it shall be the duty of the master immediately on arrival of the ship at any port where a survey can be made, to cause such survey to be instituted.

33. The master shall make himself acquainted with the regulations and provisions regarding the shipping and navigation of the ports at which he is to call during the voyage. In case of war or blockade, he should try to obtain information as to what he has to observe for the safety of ship and cargo.

To § 33 D. Cf. notably the Law of 15th Feb. 1895 concerning precautionary measures for the protection of submarine telegraph and telephone cables and the note to § 219.

## Dansk Text.

34. I saadan Antal og mod saadan Betaling, som af Kongen fastsættes, er Skipperen pligtig, til Bestemmelsesstedet eller anden Havn, som Skibet under Rejsen skal anlobe, at medtage danske Søfolk, hvis Hjemsendelse det paaligger Konsulen at besørge.

## Norsk Text.

34. Norske Sjøfolk, hvis Hjemsendelse det paaligger Konsulen at besørge, er Skibsføreren pligtig til at medtage til Bestemmelsesstedet eller anden Havn, som Skibet under Reisen skal anlobe, dog kun i saadan Antal og mod saadan Betaling, som af Kongen fastsættes. Samme Forpligtelse skal, forsaavidt det af Kongen bestemmes, ogsaa paahvile ham med Hensyn til fremmede Sjøfolk, der efter Traktat skal hjemsendes ved norsk Konsuls Foranstaltning.

## Svensk text.

34. Befälhafvaren vare pligtig att till sådant antal oeh mot den betalning, som af Konungen fastställes, till bestämmelseorten eller annan hamn, som fartyget under resan skall anlöpa, medtaga svenskt sjöfolk, hvars hemsändande det åligger konsulerna att besörja. Konungen äge ock, under förutsättning af ömsesidighet, förordna, att samma förbindelse skall äga rum i afseende å sjöfolk från annat land.

Saaledes hjemsendte Søfolk ere i Henseende til Skik og Orden om Bord pligtige at iagttage, hvad der paaligger Mandskabet, og derhos, naar det findes nødvendigt, efter Evne at yde Bistand ved Skibsarbejdet.

35. Paa ethvert Skib, der gaar i udenrigsk Fart vest for Linien Texelen—Lindesnæs og for Østersøens Vedkommende nordligere end den 58de Breddegrad, skal fores en Dagbog (Journal) og paa Dampskibe derhos som Tillæg til denne en særlig Maskindagbog. Nærmere Regler om disse Bogers Indretning og Autorisation fastsættes

Saaledes hjemsendte Sjøfolk skal i Henseende til Skik og Orden ombord iagttage, hvad der paaligger Mandskabet, og er derhos pligtige til, naar det findes nødvendigt, efter Evne at yde Bistand ved Skibsarbeidet. (*Lov af 11 Juni 1906.*)

35. Paa ethvert Skib, der gaar i udenrigsk Fart, skal der fores: en Dagbog (Journal) og paa Dampskibe derhos som Tillæg til denne en særskilt Maskindagbog. Forsaavidt det maatte findes hensigtsmæssigt, kan Kongen anordne, at der skal fores særskilt Dagbog angaaende de Mandskabet vedrørende Forhold.

Sjöfolk, som sålunda hemsändes, vare pligtigt att i afseende å ordning oeh skiek ombord iakttaga allt hvad besättningen åligger samt att, der det finnes nödvändigt, biträda vid skeppsarbetet. (*Lag af 27 April 1906.*)

35. Å alla segelfartyg, hvilka ega en dräktighet af femtio ton eller derutöfver, så ock å alla ångfartyg skall, när de afgå till andra orter utom riket, än de vid Östersjön belägna samt orter i Danmark oeh Norge på denna sidan om Skagens fyr oeh Lindesnäs, föras skeppsdagbok; å ångfartyg skall dessutom, såsom bihang till skepps-

*ad § 34 D.* Jfr. Anordning af 17 Mai 1893.

N. Jfr. kgl. Plakat af 5 Juni 1908. Se ogsaa Lov om den konsulære Retspleie af 29 Marts 1906, § 21 angaaende norske Skibsføreres Pligt til at medtage fængslede Personer m. v. paa Reise til Hjemlandet eller til en Havn paa Veien dertil.

N. og S. Angaaende Hjemsendelse af fremmede Søfolk, jfr. Konventioner af 31 Mai 1881 med Tyskland, af 12 Juni 1881 med Italien, af 12 Juli 1881 med Storbritannien og Irland og af 10 August 1883 med Danmark.

*ad § 35 D.* Ang. Dagbøger jfr. Bekjendtgørelser af 22 Dec. 1892 og 2 August 1893 samt Lov 18 Nov. 1898 ang. Betalingen for Autorisation og Eftersyn af Skibsdagbøger, jfr. endvidere Lov om Tilsyn med Sejskibe af 14 Maj 1909 og Bkg. af 8 og 13 December s. A.

N. Formularen for Dagbøgerne er fastsat ved kgl. Res. af 10 Juli 1894. Nogen Mandskabsdagbog eller Dagbog for indenrigsk Fart er endnu ikke paabudt.

S. Formular for Skibsdagbogen er fastsat ved kgl. Bekjendtgørelse af 24 Jan. 1902 og for Maskindagbogen af 31 Decbr. 1891, jfr. forøvrigt om Dagbøger de kgl. Bekjendtgørelser af 31 Decbr. 1891 og 26 Juni 1903. — „Somandshuset“ er en særlig svensk Indretning. Et saadant findes i hver større Søby (hver „Stapelstad“), og de har til Formaal at samle og give Oplysninger om alle der hjemme hørende Sømand, at holde Fortegnelser over de af disse Sømand, som hvert Aar anvendes i Koffardifarten, saavel som forøvrigt at have Indseende med Søfolkene og understøtte de Trængende samt deres efterladte Enker og Børn. Reglement for Somandshusene er udfærdiget af Kongen under 4 Marts 1870 og senere ved kgl. Bekjendtgørelser oftere forandret. De staa under Overledelse af Kommerecollegiet i Stockholm og er hvert enkelt stillet under en Direktion af (6 eller 3) Skipper og Redere, som beklæder Stillingen som et ulønnet Æreshverv. De løbende Forretninger besørges derimod af en af Direktionen anført lønnet Ombudsmand, som bl. a. udfører Mønstringsforretningerne og fører Regnskaberne, jfr. angaaende Mønstringen kgl. Forordning af 4 Juni 1868 med senere Ændringer, særlig den ved kgl. Bekjendtgørelse af 31 Decbr. 1891.

## Danish Text.

34. The master is bound to afford a passage to the port of destination, or any other port at which the vessel may call during its voyage, to Danish seamen whose conveyance home it is the Consul's duty to provide for, up to such a number and for a consideration which will be fixed by the King.

Seamen sent home in this way must observe the duties of the crew as regards order and discipline on board, and besides, when requisite, assist to the best of their ability at the work on board.

35. A logbook (journal) is to be kept on board every ship when sailing to foreign ports west of the line Texelen-Lindesnäs and, as to the Baltic, north of the 58th degree of latitude, and on board steamers moreover, as an appendix to the ship's logbook, a special engineer's journal. Further regulations concerning the form

## Norwegian Text.

34. The master is bound to receive on board, and convey to the port of destination, or some other port at which the ship shall call during the voyage, such Norwegian seamen as have to be sent home by the Consul, but only in such numbers, and for such payment, as may be determined by the King. The same rule shall apply, if the King so decides, in respect to foreign seamen who, by treaty rights, are to be sent home at the instance of a Norwegian Consul.

Seamen thus sent home shall observe the same disciplinary rules as the crew, and must, when found necessary, assist in the work on board to the best of their ability. (*Law of June 11th 1906.*)

35. Every ship employed in the foreign trade shall have a log book (ship's journal), and steam ships, in addition thereto, a separate log book for the engine-room. Should it be deemed expedient, the King may decide that a separate journal shall also be kept concerning matters relating to the crew.

## Swedish Text.

34. The master shall be bound to receive on board Swedish seamen whose conveyance home it is the duty of the Consuls to provide for, and to afford them a passage to the port of destination or to any other port at which the ship may call during the voyage. Such seamen are to be received on board and conveyed up to such a number and for such consideration as is fixed by His Majesty. The King may also order that the same obligation shall be in force regarding seamen of another country on condition of reciprocity.

Seamen thus sent home shall be bound to observe the duties of the crew as regards order and discipline on board, and where requisite, assist in the work on board. (*Law of the 27th of April, 1906.*)

35. A logbook shall be kept on board every sailing ship of fifty tons burden or upwards, and also on every steamship, when sailing to foreign ports, other than Baltic, and ports in Denmark and Norway east of the Skagen Light and Lindesnäs; on board every steamer, moreover, an engineer's logbook shall be kept

To § 34 D. Cf. the Ordinance of 17th May 1893.

N. Cf. the Royal Placard of 5th June 1908. See also the Law concerning the Consular Administration of Justice of 29th March 1906, § 21, regarding the obligation of Norwegian shipmasters to transport prisoners etc. who are returning to their native country or to a port situated on the route to Norway.

N. and S. Concerning the sending home of foreign seamen, cf. the Convention with Germany of 31st May 1881, with Italy of 12th June 1881, with Great Britain and Ireland of 12th July 1881 and with Denmark of 10th August 1883.

To § 35 D. As to logbooks cf. the Publications of 22nd Dec. 1892 and 2nd August 1893 and the Law of 18th Nov. 1898 concerning the charges for the authorization and inspection of logbooks and journals; cf. also the Law concerning the survey of sailing vessels of 14th May 1909 and the Publication of 8th and 13th December of the same year.

N. The form of logbooks (journals) has been fixed by the Royal Resolution of 10th July 1894. Journals for matters relating to the crew and logbooks for vessels navigating in Danish waters have not yet been prescribed.

S. The form of a ship's logbook has been fixed by the Royal Publication of 24th January 1902 and that of an engineer's logbook by the R. P. of 31st Dec. 1891; cf. also in regard to logbooks the Royal Publications of 31st Dec. 1891 and 26th June 1903. — The "Mercantile Marine Office" is a particular Swedish institution. Such an office is to be found in every important maritime town (every "Stapelstad", town having warehouses), and its object is to collect and give information about all seamen who have their homes at the place in question, to keep a record of those seamen who are employed every year on board mercantile vessels, and in general to look after the seamen and assist those of them who are in need and their widows and children who are left behind. The regulations for the "Mercantile Marine Office" were made by the King on the 4th March 1870 and have subsequently been modified by Royal Publications several times. They are under the auspices of the Chamber of Commerce of Stockholm and each of them has a board of directors composed of (6 or 3) shipmasters and shipowners who hold the position as an unpaid honorary charge. The current affairs, on the other hand, are conducted by a paid official appointed by the directors, who notably keeps the seamen's register and the accounts; cf. concerning the register the Royal Ordinance of 4th June 1868, with subsequent modifications, in particular the modification brought about by the Royal Publication of 31st Dec. 1891.

af Kongen. Dagbogen skal ved Skibets Udklarering fra indenlandsk Havn forevises Toldopsynet, der uden Betaling giver Bogen Paategning om Forevisningen.

Dagbog kræves dog ikke for Skibe, som kun gaa paa Fiskefangst i Nord og Østersøen uden for de nævnte Linier.

36. Dagbogen føres af Skipperen eller under hans Tilsyn og Medansvar af Styrmanden; Maskindagbogen under Skipperens Tilsyn og Medansvar af Maskinmesteren. De føres efter Tidsfølgen, i Havn for hvert Dogn, i Søen for hver Vagt. Hvad der passerer paa den enkelte Vagt, kan foreløbig optegnes paa en Kladde, men skal indføres inden Etmaalets Ende.

Bogen bør føres ordentligt og tydeligt. Hvad en Gang er indført, maa ikke raderes, overstryges eller paa anden Maade gøres ulæseligt; bliver Rettelse nødvendig, bør den tilføjes som Anmærkning.

37. I Dagbogen bør nøjagtig optegnes enhver under Rejsen indtræffende Begivenhed og Omstændighed, hvorom Kundskab kan være til Nytte for Redere, Ladningsejere, Forsikringsgivere eller andre, der have Interesse i Rejsen.

Der bliver saaledes at gøre Bemærkning om, naar Mandskabets Tjeneste begynder og ender, naar Proviant og Vand tages om Bord, naar Indladning eller Udlosning begynder, afbrydes og fuldendes, saa og om, hvad der hver Dag indlades eller udlosses, om Indtagelse af Ballast, dens Vægt, Beskaffenhed og Maaden, hvorpaa den er sikret, om hvor vidt fremmed Arbejdshjælp benyttes, om Skibets Dybtgaaende for og agter og dets Tilstand for øvrigt, naar det forlader Havn, om Lastens Beskaffenhed og Tilstand samt, hvis Dækslast føres, tillige dennes Mængde og Højde, om Kompas-

Nærmere Regler om disse Bogers Indretning og Autorisation fastsættes af Kongen.

Hvorvidt og i hvilken Udstrækning Dagbog skal føres paa Skibe i indenrigsk Fart, bestemmes af Kongen.

36. Dagbogen føres af Skibsføreren eller af Styrmanden under Skibsførerens Tilsyn og Medansvar; Maskindagbogen føres af Maskinmesteren, ligeledes under Skibsførerens Tilsyn. Bøgerne føres efter Tidsfølgen, i Havn for hvert Dogn, i Sjøen for hver Vagt. Hvad der passerer paa den enkelte Vagt kan foreløbig optegnes paa en Kladde, men skal indføres inden Etmaalets Ende.

Bøgerne bør føres ordentligt og tydeligt. Hvad engang er indført, maa ikke raderes, overstryges eller paa anden Maade gøres ulæseligt; bliver Rettelse nødvendig, bør den tilføies som Anmærkning.

37. I Dagbogen bør nøjagtig optegnes enhver under Reisen indtræffende Begivenhed og Omstændighed, hvorom Kundskab kan være til Nytte for Redere, Ladningseiere, Forsikringsgivere eller Andre, der har Interesse i Reisen.

Der bliver saaledes at gøre Bemærkning om, naar Mandskabets Tjeneste begynder og ender, naar Proviant og Vand tages ombord, naar Lastning og Losning begynder, afbrydes og fuldendes, ligeledes om, hvad der hver Dag indlades eller udlosses, om Indtagelse af Ballast, dens Vægt, Beskaffenhed og Maaden, hvorpaa den er sikret, om hvorvidt fremmed Arbejdshjælp benyttes, om Skibets Dybgaaende for og agter og dets Tilstand forøvrigt, naar det forlader Havn, om Lastens Beskaffenhed og Tilstand samt, hvis Dækslast føres, dennes Mængde og Højde, om Kompassernes Regulering og Deviation,

dagboken, föras särskild maskindagbok.

Dagboken, hvilken upprättas efter ett af Konungen fastställt formulär, tillhandahållas af sjömanshuset i afgångsorten.

36. Skeppsdagboken föras af befälhafvaren eller, under hans tillsyn och ansvar, af styrmannen; maskindagboken föras, likaledes under befälhafvarens tillsyn och ansvar, af maskinisten. Anteckningarna i dagboken skola göras efter tidsföljden, i hamn för hvarje dygn och till sjös för hvarje vakt; hvad under en vakt förekommer må tills vidare upptecknas å en kladd, men det antecknade skall före dygnets utgång införas i dagboken.

Dagboken skall föras med ordning och tydlighet; hvad deri blifvit infördt må icke utplånas, öfverstrykas eller på annat sätt göras oläsligt, utan bör, i händelse oriktig anteckning skett, rättelse införas å vederbörligt ställe i dagboken.

37. I skeppsdagboken böra noggranna uppgifter införas om allt, som under resan förefaller och hvarom kännedom kan vara till nytta för redare, lastegare, försäkringsgivare eller annan, hvars rätt kan vara beroende af resans utgång. Deri bör sålunda antecknas:

1. När besättningen inträder i tjänst och derifrån afgår; när proviant och vatten tagas ombord; när lastning eller lossning börjar och slutar, eller arbetet afbrytes, samt huru mycket för hvarje dag inlastas eller lossas; när barlast intages, dennas beskaffenhet och ungefärliga vikt samt huru den är anbragt; om och i hvilken utsträcknin grämmande arbetsbiträde användes; fartygets djupgående för och akter då det lemnar hamn, så ock i allmänhet det skiek, hvari fartyget och dess redskap befinnas, samt lastens beskaffenhet och tillstånd äfvensom, när däckslast intages, dennas mängd



## Danish Text.

and authorization of these books will be given by the King. When the ship is cleared out of a port within the Kingdom, the logbook is to be shown to the customhouse officers, who gratuitously give the book their visa.

A logbook is, however, not requisite for ships employed in fishery, beyond the above mentioned lines, in the North Sea and the Baltic.

**36.** The ship's logbook shall be kept by the master or, under his supervision and co-responsibility, by the mate; the engineer's journal by the engineer under the master's supervision and co-responsibility. The entries are to be made in a chronological order every day when in harbour, and every watch when at sea. Of all that takes place during each watch there may be made a rough draft, which before the expiration of 24 hours must be entered into the logbook.

The logbook must be kept in an orderly and plain manner. No entry made therein must be erased, struck out or in any other manner rendered illegible; should it be necessary to make any correction, this should be put down as an annotation.

**37.** Any occurrence during the voyage, or circumstances, the knowledge of which may be of use to the owners of the ship or the cargo, underwriters or any other persons having an interest in the voyage, should be carefully entered in the logbook.

Thus observations are to be made of when the crew is engaged or discharged, when provisions and water are taken on board, when the loading or discharging of the cargo is commenced, interrupted and completed, as well as of how much is loaded or discharged every day, of the taking in of ballast, its weight, of what kind it is and the manner in which it is stowed, of the extra hands which may have been employed, of the ship's draught for and aft and its condition in general when it leaves port, of the kind and condition of the cargo; and also, when a deck-

## Norwegian Text.

Further regulations in respect to the form and authorization of these books shall be determined by the King.

The King may decide whether, and to what extent, log books shall be kept in ships trading only between ports in the Kingdom.

**36.** The log book shall be kept by the master, or, under the master's supervision and co-responsibility, by the mate. The engine-room log book is to be kept by the Engineer, likewise under the supervision of the master. The entries in the books shall be made in chronological order, when in port every 24 hours, but at sea in every watch. Occurrences happening during a watch may be temporarily entered on a memorandum, but must be entered on the Log within the expiry of the 24 hours.

The book must be legibly and properly kept. Entries once made must not be erased or lined through, or otherwise rendered illegible. All necessary corrections must be added as remarks.

**37.** Every occurrence and circumstance happening during the voyage, of which information might be of use to the owners of the ship or the cargo, insurers, or others interested in the voyage, must be accurately entered in the log book.

It ought particularly to be noted when the service of the seamen commences and terminates; when provisions and water are shipped on board; when the loading or unloading is commenced, interrupted or completed; the quantities loaded or discharged each day; the shipping of ballast, its weight, nature, and how secured; whether foreign labour has been employed; the draught of the ship at the bow and stern, and the condition of the ship generally when it leaves the port; the nature and condition of the cargo, and, if deck cargo is carried, the quantity and height thereof; the correction

## Swedish Text.

as an appendix to the ship's logbook.

The logbook, in the form sanctioned by His Majesty, is supplied by the Mercantile Marine Office at the port of departure.

**36.** The ship's logbook shall be kept by the master or, under his supervision, by the mate; the engineer's logbook by the engineer, likewise under the master's supervision. Every entry in the logbook shall be made in the order of occurrence, each day when in harbour, and each watch when at sea. Whatever takes place during each watch may be entered in a note book at the time, but must be copied into the logbook before the expiration of the twenty-four hours.

The logbook shall be neatly and clearly kept; no entry made therein shall be erased, struck out or in any other manner rendered illegible, but any correction, in case of wrong entry, shall be entered in the proper column in the logbook.

**37.** Any occurrence during the voyage, the knowledge of which may be of use to the owners, underwriters, the owners of the cargo or any other person or persons whose rights may depend upon the result of the voyage, shall be carefully detailed in the logbook. The following matters should consequently be entered.

1. When the crew is engaged or discharged; when provisions and water are taken on board; when the loading or discharging of cargo is commenced or completed, or whenever it is stopped, and what quantity is loaded or discharged during the day; when ballast is taken in, and of what kind and also its approximate weight and the manner in which it is stowed; if extra hands have been employed the fact should be stated and the number given; the ship's draught fore and aft when leaving a harbour and also, generally, the condition of the vessel and her tackle and fittings; a

## Dansk Text.

sernes Regulering og Deviation, om Tiden for Skibets Afgang fra, Ankomst til og Flytning i Havn, om Vind, Vejr, Barometerstand, Strom, Kurs, Fart, Seilforing, tilbagelagt Distance, Lanterneforing, Lodkast, Pejlinger og Observationer, om naar og hvor Lods kom ombord og gik fra Borde, om Pumpning, hvor ofte den finder Sted, hvor længe hver Gang og med hvilken Styrke, samt om Vandhøiden i Pumperne.

## Norsk Text.

om Tiden for Skibets Afgang fra, Ankomst til og Flytning i Havn, om Vind, Veir, Barometerstand, Strom, Kurs, Fart, Seilforing, tilbagelagt Distance, Lanterneforing, Lodkast, Peilinger og Observationer, om, naar og hvor Lods kom ombord og gik fraborde, om Pumpning, hvor ofte den finder Sted, samt om Vandhøiden i Pumperne.

## Svensk text.

och höjd; kompassernas justering och dervid befunna deviation; när fartyget afgår från och ankommer till eller förflyttas inom hamn; vind och väderlek, barometerstånd, ström, kurs, fart, segelföring och tillryggelagd väglängd; lyktföring, lodningar, pejlningar och observationer samt de för hvarje dygn gjorda ortbestämningar; när och hvar lots tages om bord och lemnar fartyget; huru ofta pumpning eger rum, huru länge hvarje gång dermed fortsättes och hvilken arbetsstyrka dervid användes samt hvilken vattenhöjd iakttages vid pumparne;

Bestikket indføres for hvert Etmaal.

Naar Skibsraad holdes, blive saavel de afgivne Meninger som Skipperens Beslutning at indføre i Dagbogen og Tilforselen at underskrive af de raadslaaende. Fremdeles bliver det i Dagbogen at bemærke, naar nogen af Mandskabet bliver syg, dør, rommer eller gør sig skyldig i Forbrydelse eller Disciplinærforseelse, jfr. § 47 og § 103, saa og naar og i hvilken Anledning Skipperen under Rejsen finder det nødvendigt at mindske Kosten, jfr. § 45.

Særlig bliver der i Dagbogen at indføre nøjagtig Oplysning om ethvert Uheld, der maatte tilstøde Skib eller Ladning, med Angivelse af Foranledningen, de nærmere Omstændigheder og de trufne Foranstaltninger.

I Maskindagbogen indføres Skibets Forraad af Kul og andre Maskinformødenheder ved Afgang fra Havn, Kulforbruget for hvert Døgn og i øvrigt alt, som vedrører Maskinen, dens Gang og Pasning.

Bestikket indføres for hvert Etmaal.

Naar Skibsraad holdes, skal saavel de afgivne Meninger som Skibsførerens Beslutning indføres i Dagbogen, og Tilforselen underskrives af de Raadslaaende. Fremdeles skal det bemærkes i Dagbogen, naar nogen af Mandskabet bliver syg, dør, rommer eller gjør sig skyldig i Forbrydelse eller Disciplinærforseelse, jfr. § 47 og § 103, samt naar og i hvilken Anledning Skibsføreren under Reisen finder det nødvendigt at mindske Kosten, jfr. § 45.

Særlig bliver der i Dagbogen at indføre noiagtig Oplysning om ethvert Uheld, der maatte tilstøde Skib eller Ladning, med Angivelse af Foranledningen, de nærmere Omstændigheder og de trufne Foranstaltninger.

I Maskindagbogen indføres Skibets Forraad af Kul og andre Maskinformødenheder ved Afgang fra Havn, Kulforbruget pr. Døgn og iøvrigt Alt, som vedrører Maskinen, dens Gang og Pasning.

Forsaavidt særskilt Dagbog angaaende de Mandskabet vedrørende Forhold anordnes, be-

2. När skeppsråd hålles, de dervid yttrade meningar och de beslut, befälhafvaren fattar; börande de, hvilka med befälhafvaren deltagit i skeppsrådet, med sin underskrift bestyrka anteckningens riktighet;

3. När någon af besättningen insjuknar, dör eller rymmer; när och af hvilken anledning befälhafvaren finner nödvändigt att nedsätta besättningens kost, som i 45 § sägs; när någon begår brott eller gör sig skyldig till fel eller försummelse i tjensten, samt hvad vid förhör, som med anledning deraf hålles, förekommer;

4. När ofall träffar fartyg eller last, under angifvande tillika af anledningen till olyckan, dermed sammanhängande omständigheter samt den åtgärd, som vidtages.

I maskindagboken skall uppgifvas förrådet af kol och öfriga för maskinens drift nödiga ämnen vid fartygets afgång från hamn, kolförbrukningen för hvarje dygn samt i öfrigt allt, som rör maskinens gång och skötsel.

## Danish Text.

cargo is loaded, of the quantity and height of the same; of the adjusting of the compasses and the deviation found; of the time when the ship leaves or arrives at a harbour, or is moved when in port; of wind, weather, height of the barometer, current, course, speed, quantity of canvas carried, distance run, lanterns burning, casts of the lead, bearings and observations made; when and where a pilot came on board and left the ship; how often pumping takes place and how long continued each time, the number of hands employed and the sounding of the pumps.

The dead reckoning is entered for every twenty-four hours.

When consultation of the crew takes place, the opinions given as well as the decision of the master are to be entered in the logbook and the entries to be signed by the parties to the consultation. Moreover, it must be put down in the logbook, if any of the crew is taken ill, dies, deserts, or is found guilty of any crime or breach of discipline, *cfr.* § 47 and 103, and also if and on what account the master during the voyage considers it necessary to reduce the allowances, *cfr.* § 45.

In particular, accurate entries shall be made in the logbook of every accident to ship or cargo, stating its cause, the circumstances and the measures taken.

In the engineer's journal entries shall be made of the quantity of coal and other requisites for the working of the engines on board the ship when it leaves a port, the daily consumption of coal, and moreover, everything regarding the working and management of the engine.

## Norwegian Text.

and deviation of the compasses; the time of departure from, and arrival at, each port, and of shifting within a port; wind and weather; the height of the barometer; current and tides; the course steered; the speed; the sails set; the distances sailed; the lanterns carried; soundings, bearings and observations; when and where pilots have been taken on board and dismissed from the vessel; the number of times the pumps are worked, and the height of the water in the pumps.

The ship's reckoning is to be entered every 24 hours.

When a council is held on board, the opinions of those present and the decision of the master shall be entered in the log-book, and the entry be signed by all members of the council. Entries shall moreover be made in the log-book of every case of sickness, death, desertion, crime or breach of discipline amongst the crew (see §§ 47 and 103), also when, and for what reasons, the master has found it necessary to reduce the rations during the voyage (see § 45).

Especially must there be entered in the log-book an accurate account of every accident which may be caused to the ship or the cargo, with a statement of the cause thereof, together with all particulars relating thereto, and the measures adopted on the occasion.

In the engine room log-book entries shall be made of the stock of coal and other requisites for the engines on leaving a port, the daily consumption of coal and, besides, all other particulars relative to the engines, the manner in which they work, and how they are attended to.

If it be decided that a separate log-book shall be kept concerning the affairs

## Swedish Text.

description and statement of the condition of the cargo, and also, when a deck cargo is loaded, the quantity and height of the same; the adjusting of the compasses and the deviation found; the time when the ship leaves or arrives at a harbour or is removed when in port; wind, weather, state of barometer, current, course, speed, under what sails and the distance run, lights burning, casts of the lead, bearings and observations, and the Latitude and Longitude ascertained each twenty-four hours; when and where a pilot comes on board or leaves the ship; how often pumping takes place and how long continued, and the number of hands employed and also the soundings of the pumps taken.

2. When consultation of the crew takes place, the opinions given and the master's decision, and such of the crew as have been parties to the consultation should confirm the correctness of the entry by signing their names.

3. Every case of illness, death or desertion; when and why the master deems it expedient to reduce the provisions as mentioned in Art. 45; every offence committed by any member of the crew; or any fault or neglect in the service, and the evidence given whenever any case is examined into.

4. Every casualty to ship or cargo, stating its cause, the circumstance attending the same, and the measures taken.

In the engineer's logbook the following entries shall be made, viz: The quantity of bunker coals and other requisites for the working of the engines found on board when the ship leaves a port; the daily consumption of coal, and moreover everything affecting the working and management of the engines.

stemmer Kongen, hvad der skal indtages i denne, hvad i den almindelige Dagbog.

38. Naar en Dagbog er udskreven eller af anden Grund ikke længer kan bruges, har Skipperen at sørge for ny Bog og for dennes Autorisation. I den gamle skal da anmærkes, at ny Bog er bleven autoriseret, og naar dette er sket. Kan den ældre Dagbog ikke bringes til Stede, skal Grunden dertil oplyses og anføres i den ny.

Naar saaledes en ældre Dagbog skal ombyttes med en ny, har vedkommende Embedsmand at undersøge, om den er ordentlig fort, Dag for Dag, og i modsat Fald at foranledige Skipperen tiltalt. Ligeledes skal Dagbogen inden næste Dags Udgang indleveres til Gang Skibet faar en ny Forer, Ulykke, i Anledning af hvilken og Skipperen anlober en indenlandsk Havn eller en fremmed Havn, hvor dansk Konsul er ansat, samt naar Mandskabet afmonstres, eller Skibet kommer tilbage til en indenlandsk Havn og der lossers sin Ladning eller den største Del deraf. I Dagbogen gøres Bemærkning om, hvornaar Indleveringen er sket, og om den stedfundne

38. Naar en Dagbog er udskreven eller af anden Grund ikke længer kan bruges, har Skibsføreren at sørge for ny Bog og for dennes Autorisation, i den gamle skal da anmærkes, at ny Bog er bleven autoriseret, og naar dette er sket. Kan den ældre Dagbog ikke bringes til stede, skal Grunden dertil oplyses og anføres i den nye.

Anordnes særskilt Dagbog angaaende de Mandskabet vedrørende Forhold kan Kongen bestemme, at den til visse Tider skal indleveres til Granskning.

saadan Undersøgelse, hver naar der tilstoder Skibet en Søforklaring skal optages (§ 40), og Skipperen anlober en indenlandsk Havn eller en fremmed Havn, hvor dansk Konsul er ansat, samt naar Mandskabet afmonstres, eller Skibet kommer tilbage til en indenlandsk Havn og der lossers sin Ladning eller den største Del deraf. I Dagbogen gøres Bemærkning om, hvornaar Indleveringen er sket, og om den stedfundne

For Dampskibe, der gaa i regelmæssig Fart mellem indenlandske og fremmede Havne, kan ved kongelig Anordning fastsættes Lempelser med Hensyn til Eftersynet.

39. Enhver, som paaviser en retlig Interesse, kan forlange Adgang til at blive bekendt med Dagbogernes Indhold. De bor, naar de ere udskrevene, opbevares mindst to Aar efter Rejsens Slutning, og, hvis der for Retten er rejst Sag vedrørende Rejsen, indtil Sagens endelige Udgang.

40. Indtræffer paa Indladnings- eller Lossested eller under Rejsen nogen Begivenhed, som medfører Skade af nogen Betydning paa Skib eller Ladning, eller som med Grund kan formodes at have saadan Skade til Følge, saa og naar nogen af de ombordværende ved Ulykkestilfælde er omkommen uden for indenlandsk Havn, eller

39. Enhver, som paaviser en retlig Interesse, kan forlange Adgang til at blive bekendt med Dagbogernes Indhold. De bor, naar de er udskrevene, opbevares mindst to Aar efter Rejsens Slutning og, hvis der for Retten er rejst Sag vedrørende Rejsen, indtil Sagens endelige Udgang.

40. Indtræffer paa Indladnings- eller Lossested eller under Rejsen nogen Begivenhed, som medfører Skade af nogen Betydning paa Skib eller Ladning, eller som med Grund kan formodes at have saadan Skade til følge, eller er nogen af de Ombordværende ved Ulykkestilfælde omkommen, eller er der ved Sammenstød tilføiet andet

38. Varder dagbok under resa fullskrifven eller af annan anledning icke användbar, åligge befälhafvaren att, om fartyget befinner sig i svensk hamn, anmäla sig hos ombudsmannen vid dervarande eller närmaste sjömanshus till erhållande af ny dagbok; är fartyget å utrikes ort, skall befälhafvaren i öfverensstämmelse med det fastställda formuläret upprätta ny dagbok och vid fartygets ankomst till hamn, der svensk konsul finnes, för denne förete dagboken, hvilken skall af konsuli genomdragas och förses med embetssigill jemte intyg om sidornas antal. När ny dagbok sålunda utfärdas eller för konsul uppvisas, skall befälhafvaren tillika förete den förra dagboken; och meddele vederbörande sjömanshusombudsman eller konsul, omedelbart efter den deri sist införda uppgift, intyg derom att dagboken blifvit uppvisad och att ny sådan blifvit för fartyget utfärdad. Kan befälhafvaren icke förete den förra dagboken, skall anledningen uppgifvas och anteckning derom ske i den nya dagboken.

39. Ej må någon, hvars rätt är deraf beroende, förvägras att om dagboks innehåll undfå nödig kännedom och att deraf taga skriftligt utdrag. Dagbok skall af redaren förvaras minst inom två år efter dess afslutning och, i händelse med anledning af deri antecknad resa tvist nämnda tid anhängiggjorts, till dess den tvist blifvit genom laga kraft egande dom afgjord.

40. Inträffar å lastnings- eller lossningsort eller under resa någon händelse, som vållar skada å fartyg eller last eller som skäligen kan antagas hafva sådan skada till följd, eller har genom olykshändelse någon ombord ljugit döden, eller har till följd af sammanstötning med annat fartyg å detta timat sådan skada eller olycka, som

Danish Text.

Norwegian Text.

Swedish Text.

38. Should a logbook during a voyage be filled up, or from any other reason be rendered unsuitable for use, the master has to provide for a new book and its authorization. In the old one an annotation must be made stating that a new book has been authorized and when this has taken place. If the former logbook should not be forthcoming, information of the reason must be given in the new one.

Whenever a former logbook is to be replaced by a new one, the authorities in question have to examine if it has been properly kept from day to day, and if not, to cause an action to be brought against the master. The logbook shall also within the expiration to an examination as above gets a new master or meets with a declaration in Court which a declaration in Court the master calls at a Danish port or a foreign port, where a Danish Consul is appointed, as well as when the crew is discharged, or the ship returns to a Danish port and there discharges its cargo or the greater part of it. In the logbook an annotation is to be made as to when it was delivered and as to the examination which has taken place.

To steamers running regularly between Danish ports and foreign ports concessions regarding the examination may be made by Royal Ordinance.

39. Anybody who proves that he has a legal interest in it, may demand the permission to make himself acquainted with the contents of the logbooks. The logbooks shall, when filled up, be kept for at least two years after the completion of the voyage, and, should a lawsuit have arisen with regard to the voyage, until the lawsuit has been finally settled.

40. Should, whilst the vessel is loading or discharging at a port during the voyage, any accident occur, causing damage of importance to ship or cargo, or by which such damage may reasonably be supposed to be incurred, or should anybody on board the ship, when not in a Danish port, suffer death from any accident, or should

of the crew, the King may resolve as to what entries are to be made therein, and what in the general log-book.

38. If a log-book is finished, or for other reasons cannot longer be used, the master shall provide a new log-book and have the same duly certified. In such a case a note shall be made in the old log-book to the effect that a new book has been certified, and the time when this has taken place. If the old log-book cannot be produced an entry shall be made in the new book of the circumstances preventing such production.

If it be decided that a separate log-book shall be kept concerning the affairs of the crew, the King may resolve that it shall be presented, at fixed times, to the Authorities for inspection.

of the next day be submitted mentioned, whenever the ship with an accident, regarding is to be made (§ 42), and the or a foreign port, where a as well as when the crew is to a Danish port and there discharges its cargo or the greater part of it. In the logbook an annotation is to be made as to when it was delivered and as to the examination which has taken place.

39. Any person proving to have a lawful interest in knowing the contents of the log-books may demand an opportunity of making himself acquainted with the contents thereof. When finished, the log-books ought to be preserved for at least two years after the completion of the voyage, and, if an action at law is brought concerning matters in connection with the voyage, then until the case has been finally decided.

40. When, in consequence of any occurrence at a place of loading or discharge, or during the voyage, the ship or cargo has suffered any material damage, or when there is good reason to suspect that such damage has been caused, or when any death by accident has occurred on board, or when by collision such

38. Should, during a voyage, the logbook be filled up, or from any other reason be rendered unfit for use, the master shall give notice, when in a Swedish port, to the Superintendent of the Mercantile Marine Office, in order to obtain a new logbook. When abroad, the master shall draw up a new logbook in accordance with the form prescribed and shall on the arrival of the ship at any port where a Swedish Consul resides exhibit it to the said Consul, who will unite the pages under his seal of office together with a certificate stating the number of pages. Whenever a new logbook is issued or exhibited to the Consul as aforesaid, the master shall likewise exhibit the previous logbook, and the Superintendent or Consul concerned shall immediately, at the foot of the last entry, endorse a certificate stating that the logbook has been exhibited and that a new one has been issued to the ship. In case the master cannot exhibit the logbook previously in use, the reason shall be given and entered in the new logbook.

39. No person, whose right may in any way depend thereon, shall be refused the necessary information regarding the contents of the logbook or the right to take an extract thereof in writing. The logbook shall be preserved by the owners at least two years after it is finished, and in case a lawsuit should arise within the period aforesaid in connection with the voyage therein referred to, until such lawsuit has been settled by a valid judgment.

40. The master shall note and extend a protest against the sea regarding any of the following events, i. e.

1. Should, whilst the vessel is loading or discharging at a port or during the voyage, any accident occur causing damage to ship or cargo, or by which damage may reasonably be supposed to be incurred.

## Dansk Text.

naar ved Sammenstød Skade eller Ulykke af den anførte Beskaffenhed, er tilføjet andet Skib, skal Skipperen afgive Søforklaring.

Her i Riget har han, inden Udlobet af næste Dag, efter at Ulykken fandt Sted eller opdagedes, at gøre Anmeldelse til Stedets Dømmer, i København til Sø- og Handelsretten; er Begivenheden indtruffet paa Soen, regnes Fristen fra Skibets eller de skibbrudnes Ankomst til Red eller Havn. Ved Anmeldelsen skal indleveres en ordret Udskrift af, hvad der om det forefaldne er tilføjet Dagbogen, eller, hvis en saadan ikke er ført, eller den er gaaet tabt, en skriftlig Fremstilling af Begivenheden og derhos en Fortegnelse over Skibets Mandskab og andre Personer, der antages at kunne give Oplysning i Sagen, samt om muligt en Angivelse af de i Sagen interesserede Personer eller deres befuldmægtigede. Retten berammer derefter Retsmode til Optagelse af Søforklaring og foretager det videre fornødne i den Anledning. Skipperen har til Retsmodet at medbringe Dagbøgerne.

Uden for Riget har Skipperen snarest muligt at afgive Søforklaring for den Myndighed, under hvem saadanne Forretninger paa Stedet henhøre, eller for vedkommende danske Konsul, saafremt denne af Udenrigsministeriet har faaet særlig Bemyndigelse til at modtage slige Forklaringer.

Afgives Søforklaring for vedkommende fremmede Myndighed, og der paa Stedet er en dansk Konsul, skal der gives denne Underretning, for at han kan være til Stede i Retten og paase, at Søforklaringen bliver saa fuldstændig og paalidelig som muligt.

Om det foretagne indsender Konsulen, saavel naar han selv har modtaget Søforklaringen, som naar der har været givet ham Lejlighed til at overvære dens Afgivelse i Retten, Beretning til Udenrigsministeriet. Beretningen oversendes derfra til Justitsministeriet, som, for saa vidt dertil findes Anledning, kan forordne yderligere Undersøgelse her i Riget. (3die og 4de Led; Lov af 23 Mai 1902.)

## Norsk Text.

Skib Skade eller Ulykke af den anførte Beskaffenhed, skal Skibsføreren afgive Sjøforklaring.

Her i Riget har han inden Udlobet af næste Dag, efterat Ulykken fandt Sted eller opdagedes, at gjøre Anmeldelse til Rettens Formand; er Begivenheden indtruffet paa Sjøen, regnes Fristen fra Skibets eller de Skibbrudnes Ankomst til Red eller Havn. Ved Anmeldelsen skal der indleveres en ordret Udskrift af, hvad Dagbogen indeholder om det Forefaldne, eller, hvis Dagbog ikke er ført, eller den er gaaet tabt, en skriftlig Fremstilling af Begivenheden og derhos en Fortegnelse over Skibets Mandskab og andre Personer, der antages at kunne give Oplysning i Sagen, samt om muligt en Angivelse af de i Sagen interesserede Personer eller deres Befuldmægtigede. Rettens Formand berammer derefter Retsmode til Optagelse af Sjøforklaring og foretager det videre fornødne i den Anledning. Skibsføreren har at medbringe Dagbøgerne til Retsmodet.

Udenfor Riget har Skibsføreren snarest muligt at afgive Sjøforklaring for den Myndighed, under hvem saadanne Forretninger paa Stedet henhører, eller for den norske Konsul, dersom Forklaring for ham kan afgives med en for Øiemedet tilstrækkelig Retsvirkning. I ethvert Tilfælde skal Konsulen betimelig varsles til Forretningen, og Dagbøgerne forevises for ham og af ham paategnes.

## Svensk text.

nyss är sagd, skall befälhafvaren afgifva sjöförklaring angående händelsen.

Inom riket afgifves förklaringen inför rådstufvurätt i stapelstad; och åligge det befälhafvaren att, om olyckan inträffade eller skadan upptäcktes medan fartyget låg i hamn, der sjöförklaring kunde ega rum, inom utgången af tredje dagen derefter, den dagen oräkнад, då olyckan inträffade eller skadan upptäcktes, men eljest så snart ske kan, hos rättens ordförande anmäla sig till förklarings afgifvande. Sådan anmälan skall göras skriftligen och vara åtföljd af ej mindre en fullständig afskrift af allt hvad angående händelsen antecknats i dagboken eller, der dagbok icke förts å fartyget eller den gått förlorad, en skriftlig framställning af den timade olyckan, än äfven uppgift å hela besättningen och de personer, hvilka antagas kunna lemna upplysning i saken, samt, så vidt ske kan, å de personer, hvilka saken kan angå, eller deras ombud.

Å utrikes ort skall befälhafvaren, så snart ske kan, afgifva förklaringen inför den myndighet, som derstädes är behörig att upptaga sådan förklaring, eller ock inför svensk konsul; åliggande det befälhafvaren att för svenske konsuln å den ort, der förklaringen afgifves, eller, om der icke finnes sådan tjänsteman, för den svenske konsul, som under resan först anträffas, uppvisa dagboken och taga konsulns intyg om uppvisandet.

## Danish Text.

through collision any damage or accident as the aforesaid be inflicted on another ship, the master shall make declaration in Court.

Within the Kingdom he has before the expiration of the next day after the occurrence or discovery of the accident, to make a report to the judge of the place, or in Copenhagen to the Maritime and Commercial Court; if the accident has occurred at sea, the term is reckoned from the arrival of the ship or the shipwrecked at a roadstead or a port. Together with the report a literal copy shall be delivered of all that has been entered in the logbook concerning the accident, or if a logbook has not been kept, or has been lost, a written account of what has taken place and a list of the ship's crew and of any other person who may be supposed to be able to furnish information about the matter, and, as far as possible, the names of the persons whom the matter may concern or of their agents. The Court then fixes a day for the delivering of the declaration and undertakes all that is further necessary. The master must, on the day fixed by the Court, bring the logbooks along with him.

Outside the Kingdom the master shall as soon as possible send a report to the authority which is competent in such matters at the place in question, or to the competent Danish consul if he has been specially authorized to receive such reports by the Foreign Office.

If a maritime report is handed over to the competent foreign authority, and there is a Danish consul resident at the place, the latter shall be informed of the occurrence in order that he may be able to be present in Court and see that the report is made as complete and reliable as possible.

The consul shall report the occurrence, both in case he himself has received the report and in case he has had the opportunity of being present in Court when it was taken there, to the Foreign Office. Thence the report shall be sent to the Ministry of Justice, which, in so far as opportunity offers, may order further inquiries in this Kingdom. (3rd and 4th paragraphs: *Law of 23rd May 1902.*)

## Norwegian Text.

damage or misfortune as aforesaid has been caused to any other ship, the master shall make a maritime declaration thereof.

When in this Kingdom (Norway) he shall, within the expiry of the day after the occurrence or discovery of the misfortune took place, notify the same to the President of the Court. If it happened at sea such term of grace shall be reckoned from the time of the ship's or shipwrecked seamen's arrival at any roads or harbour. An exact copy of the contents of the log-book in respect to such misfortune shall be handed in with the notification, or, if no log-book has been kept, or if it be lost, a written statement of the affair, together with a list of the crew of the ship and other persons who might be supposed capable of giving information in respect to the matter, and, if possible, a list of all persons interested in the case or their representatives. The President of the Court shall thereupon call a meeting of the Court to take the declaration, and adopt what further measures may be necessary in the case. The master shall produce the log-books in Court.

When abroad the master shall, as early as possible, make the maritime declaration before the local Authority competent to take such declarations at the place, or before the Norwegian Consul, if the declaration, when made before him, will have sufficient legal effect. In all cases the Consul must be warned in good time to be present, and the log-book shall be produced to and endorsed by him.

## Swedish Text.

2. Should anybody on board suffer death from any accident.  
3. Should, through collision, the other ship sustain such damage or any accident occur on board as aforesaid.

Within the Kingdom extended protests are to be made before the Town Court in towns provided with a customhouse, and if the accident occurs or the damage is discovered, when in a harbour where the protest can be extended, the master shall, before the expiration of the third day exclusive of the day of the occurrence, or of the discovery of the damage, or otherwise as soon as it can be done, give notice to the President of the Local Town Court that he is prepared to deliver his declaration. Such notice shall be made in writing and shall be accompanied not only by a complete copy of all the entries in the logbook, having reference to the matter, or, in case no logbook has been kept on board or has been lost, a written account of the accident, but also by a statement giving the names of the whole crew and of any person or persons who may be supposed to be able to furnish information on the matter, and also, as far as possible, the names of the persons whom the matter may concern and their representatives.

In a foreign port, the master shall, as soon as possible, extend his protest either before the authority competent to receive such a declaration, or else before the Swedish Consul, and the master shall exhibit his logbook to the Swedish Consul at the port where the protest is extended, or, should no consular officer reside there, to the Swedish Consul of the first port at which the vessel may touch during the voyage, and shall take the Consul's certificate as to the exhibition.

in Court when it was taken there, to the Foreign Office. Thence the report shall be sent to the Ministry of Justice, which, in so far as opportunity offers, may order further inquiries in this Kingdom. (3rd and 4th paragraphs: *Law of 23rd May 1902.*)

41. Naar Skibet paa Rejsen har lidt en Skade, som nodvendiggør betydeligere Reparation eller længere Ophold, paaligger det Skipperen at lade afholde lovlig Skjonsforretning. Under denne skal Skaden besigtiges og Skon afgives over, hvad der bør foretages for at udbedre den, over hvad dette vil koste, samt over Skibets Værdi i beskadiget Tilstand. Efter endt Reparation bliver det ved ny Besigtigelse at afgøre, om Skibet er i den Tilstand, at det kan udføre den forehavende Rejse.

Har Ladningen under Rejsen lidt betydeligere Skade, eller findes der Grund til at antage, at den er i saadan Tilstand, at Losning eller anden Foranstaltning til dens Bevaring er nodvendig, eller maa Losning ske for Skibets Skyld, skal Skipperen lade afholde lovlig Besigtigelse og Skjonsforretning. Findes Lasten at være beskadiget, skulle Mændene udtale sig om de Aarsager, som kunne antages at have foranlediget Skaden, og om hvad der rettest bør foretages.

Skjonsmændene beskikkes efter den paa hvert Sted gældende Lov eller Sædvane; hvor saadan Beskikkelse sædvanmæssig ikke bruges, bør Skipperen erhverve Erklæringer af sagkyndige.

42. Hvor der kan opstaa Spørgsmaal om, at Skade er foranlediget af Mangler ved Stuvningen, Garneringen, Lugernes Skalkning eller deslige, bør Besigtelsesmænd tilkaldes ved Lugernes Aabning og Losningen. Findes der Grund til at befrygte, at Gods under Rejsen har taget Skade,

41. Naar Skibet paa Reisen har lidt en Skade, som nodvendiggør betydeligere Reparation eller længere Ophold, paaligger det Skibsføreren at lade afholde lovlig Skjonsforretning. Under denne skal Skaden besigtiges, og Skjon afgives over, hvad der bør foretages for at udbedre den, over, hvad dette vil koste, samt over Skibets Værdi i beskadiget Tilstand. Efter endt Reparation bliver det ved ny Besigtigelse at afgøre, om Skibet er i den Tilstand, at det kan udføre den forehavende Reise.

Har Ladningen under Reisen lidt betydeligere Skade, eller findes der Grund til at antage, at den er i en saadan Tilstand, at Losning eller anden Foranstaltning til dens Bevaring er nodvendig, eller maa Losning ske for Skibets Skyld, skal Skibsføreren lade afholde lovlig Besigtelses- og Skjonsforretning. Findes Lasten at være beskadiget, skal Skjonnet udtale sig om de Aarsager, som kan antages at have foranlediget Skaden, og om, hvad der rettest bør foretages.

Skjonsmændene beskikkes udenfor Norge efter den paa hvert Sted gældende Lov eller Sædvane eller af den norske Konsul, hvor ikke særlige Hensyn kræver, at de beskikkes af lokal Myndighed. Hvor Beskikkelse af Skjonsmænd sædvanmæssig ikke bruges, bør Skibsføreren erhverve Erklæringer af Sagkyndige.

besigtningmæn i eke af offentlig myndighet förordnas, inhemte befälhafvaren yttrande af sakkunnige män.

42. Hvor der kan opstaa Spørgsmaal om, at Skade er foranlediget af Mangler ved Stuvningen, Garneringen, Lugernes Skalkning eller deslige, bør Besigtelsesmænd tilkaldes ved Lugernes Aabning og Losningen. Mændene opnævnes her i Riget af vedkommende Byfoged eller Foged; i Udlandet

41. Har fartyget genom inträffad olyckshändelse under resa lidit skada, som föranleder betydligare reparation eller längre uppehåll, åligge befälhafvaren att anordna besigtning af fartyget. Besigtningmännena skola ej mindre uppskatta den genom olyckshändelsen uppkomna skada och värdet af fartyget i skadadt skick, än äfven afgifva yttrande angående de åtgärder, som för skadans botande böra vidtagas, samt beräkna därför nödig kostnad. Verkställes reparation, bör, sedan denna afslutats, genom ny besigtning utrönas, huruvida fartyget är i det skick, att den tilltänkta resan kan företagas.

Har lasten under resa lidit betydligare skada genom sjöolycka, hårdt väder eller dylikt, eller förekommer anledning att lasten är i sådant tillstånd, att särskild åtgärd för dess bevarande erfordras, eller är på grund af skada å fartyget lossning nödvändig, skall befälhafvaren anordna besigtning af lasten. Finnes lasten vara skadad, skola besigtningmännen utlåta sig angående den orsak, som kan antagas hafva vållat skadan, samt föreslå de åtgärder, som böra vidtagas.

Besigtningmän förordnas af magistrat eller, der fartyget finnes utom stads område, af magistraten i närmaste stad eller af kronfogden i orten. Utom riket skall befälhafvaren begära förordnande för besigtningmän hos den myndighet, som enligt lag eller sed å den ort, der besigtningen skall ega rum, är behörig, eller ock hos svensk konsul; finnes fartyget å ort, der enligt gällande sed

besigtningmän i eke af offentlig myndighet förordnas, inhemte befälhafvaren yttrande af sakkunnige män.

42. Förekommer anledning att gods under resa tagit skada, bör befälhafvaren, förrän godset till lastemottagaren utlemnas, låta genom tillkallade besigtningmän, som i 332 § andra stycket sägs, besigtiga godset; kan fråga uppstå derom att skadan må hafva vållats genom felaktighet vid stufning, garne-



## Danish Text.

41. Should a ship during its voyage have suffered any damage requiring extensive repairs or causing considerable delay, the master shall cause a survey to be instituted. At this survey the damage has to be examined and an estimate to be made as to what ought to be done to mend it, what the expenses may be, and as to the value of the ship in damaged condition. After the completion of the repair it must be ascertained through a new survey whether the ship is in such a condition that it can proceed on its intended voyage.

Should the cargo during the voyage have suffered considerable damage, or should there be reason to suppose that the condition of the cargo is such that the unloading of it or other measures for its preservation are necessary, or should unloading be necessary on account of the ship, the master shall cause a survey of the cargo to be made. Should the cargo be found damaged, the surveyors shall express their opinion as to the presumable causes of the damage and suggest what measures ought to be taken.

The surveyors are appointed according to the laws and customs of the port where the survey is to take place; in places where it is not the custom to appoint surveyors, the master should obtain the opinion of experts.

42. If it can be called in question whether damage may have been caused through faults in the stowing, the dunnage, the caulking of the hatchways or through any other similar fault, surveyors should be summoned at the opening of the hatchways and the unloading of the cargo.

## Norwegian Text.

41. If during the voyage the ship has sustained damage necessitating any material repairs, or causing any protracted delay, the master shall cause a survey according to law to be held, at which the injury shall be inspected and an opinion be given as to what measures shall be taken for its repair, the cost of such repair, and the value of the ship in its damaged condition. On the completion of the repairs it shall be decided by a new survey whether the ship is in such condition that it can perform the intended voyage.

If during the voyage the cargo has sustained any considerable damage, or if there be reason to believe that it is in such a condition as to necessitate its discharge, or the adoption of other measures for its preservation, or if such discharge is necessary for the sake of the ship, the master shall cause a survey and estimate according to law to be held. If the goods are found to be damaged the surveyors shall express an opinion on the circumstances supposed to have caused the damage, and on the measures it were best to adopt in consequence of such damage.

When beyond the Realm, the surveyors shall be appointed according to the law or custom in force at the place, or by the Norwegian Consul, where no special considerations require their appointment by the local Authorities. At places where the appointment of surveyors is not customary, the master ought to take the opinion of experts.

place, or to the Swedish Consul. If the ship is at a port where it is not customary that the public authority, the master shall

## Swedish Text.

41. Should the ship, from any accident during the voyage, have suffered damage requiring extensive repairs or causing considerable detention, the master shall cause a survey of the ship to be instituted. The surveyors shall not only value and appraise the damage sustained through the accident and the ship in damaged condition, but also recommend what means should be adopted for the proper repair of the damage and calculate the necessary costs. Should repairs be effected, a new survey shall, on completion of the repairs, be held in order to ascertain if the ship is in such a condition that it can proceed on the intended voyage.

Should the cargo have suffered considerable damage from any casualty, boisterous weather or similar occurrence during the voyage, or should there be reason to suppose that the condition of the cargo is such that special measures for its preservation are required, or should, on account of damage to the ship, the discharging of the cargo be found necessary, then the master shall cause a survey of the cargo to be held. Should the cargo be found damaged, the surveyors shall report their opinion as to what may be considered to have caused the damage and suggest what steps ought to be taken.

Surveyors are appointed by the magistrate, or, where the ship is lying outside the jurisdiction of a town, by the magistrates of the nearest town or by the Crown Bailiff of the District. When the ship is in a foreign port, the master shall apply for the appointment of surveyors to the authority competent so to appoint according to the laws and customs of the port where the survey is to take place. If the ship is at a port where it is not customary that the public authority, the master shall obtain the opinion of experts.

42. If there should arise a question as to whether damage has been caused by defective stowing, dunnage, battening down of the hatches, or similar negligence, surveyors shall be called to inspect the opening of the hatches and the discharge of the cargo. The surveyors shall

42. Should there be reason to suppose that the cargo has been damaged during a voyage, the master ought to cause the goods to be surveyed by surveyors called for the purpose previous to the delivery of the goods to the consignee of the cargo, as mentioned in Art. 332 sect. 2. If it can be

har Skipperen at lade afholde Besigtelsesforretning, forend Godset ndleveres til Modtageren.

43. Kommer Skibet i Havsnod, er Skipperen pligtig at gøre alt hvad der staar i hans Magt for dets Bevaring og maa ikke forlade det, saa længe der kan være Haab om dets Redning. Er Redning umulig og Faren saa truende, at han nedsages til at forlade Skibet, paaligger det ham i Særdeleshed at sørge for at bringe Dagbøgerne og Skibspapirerne i Sikkerhed; han bør derhos drage Omsorg for Bjergning af Skib og Gods og dertil søge at skaffe fornøden Bistand.

Finder Bjergning Sted, har Skipperen at lede Bjergningsarbejdet, medmindre Stedets Lovgivning eller særlig Bjergningskontrakt derfor maatte være til Hinder. Over hvad der bjerges, saa og over Antallet af de Personer, som medvirke til Bjergningen og det bjergedes Transport til Oplagsstedet, skal Skipperen selv eller ved Styrmanden gøre nøjagtige Optegnelser; ligesaa har han saa vidt muligt at prøve og med sin Paategning at bekræfte Rigtigheden af de i Anledning af Bjergning, Transport og Bevaring fremkommende Regninger.

Over Skibet saavel som over det bjergede Gods, for hvis Bevaring han bør sørge paa bedste Maade, har Skipperen saa snart som muligt at foranstalte lovlige Besigtigelse.

44. Skipperen skal behandle sine underordnede paa sømmelig Maade og ved Anordning af Arbejdet saa vidt muligt tage Hensyn til enhveres Stilling om Bord. Legemlig Revselse maa ikke tildeles nogen.

Det bør være Skipperen magtpaaliggende, at Bøn og

iagttages Reglerne i foregaaende Paragraf. Findes der Grund til at befrygte, at Gods under Reisen har taget Skade, har Skibsføreren at lade afholde Besigtelsesforretning, forend Godset ndleveres til Modtageren.

43. Kommer Skibet i Havsnod, er Skibsføreren pligtig til at gjøre alt, hvad der staar i hans Magt for dets Bevaring og maa ikke forlade det, saalænge der kan være Haab om dets Redning. Er Redning umulig, og Faren saa truende, at han nedsages til at forlade Skibet, paaligger det ham i Særdeleshed at sørge for at bringe Dagbøgerne og Skibspapirerne i Sikkerhed; han bør derhos drage Omsorg for Bjergning af Skib og Gods og søge at skaffe fornøden Bistand dertil.

Finder Bjergning Sted, skal Skibsføreren lede Bjergningsarbejdet, medmindre Stedets Lovgivning eller særlig Bjergningskontrakt maatte være til Hinder derfor. Over hvad der berges, og over Antallet af de Personer, som medvirker til Bjergningen og det Bergedes Transport til Oplagsstedet, skal Skibsføreren selv eller ved Styrmanden gjøre nøjagtige Optegnelser; ligesaa har han saavidt muligt at prøve og med sin Paategning at bekræfte Rigtigheden af de i Anledning af Bjergning, Transport og Bevaring fremkommende Regninger.

Skibsføreren har derhos saa snart som muligt at foranstalte lovlige Besigtelse over Skibet og det bergede Gods og paa bedste Maade at sørge for dets Bevaring.

44. Skibsføreren skal behandle sine Underordnede paa sømmelig Maade og ved Anordning af Arbejdet saavidt muligt tage Hensyn til Enhvers Stilling ombord. Legemlig Revselse maa han ikke tildele Nogen.

Paa Søndage og andre her i Riget anordnede Helligdage bør

ring eller skalkning af luckorna eller genom annat dylikt fel, bör befälhafvaren tillkalla besigtningmän att närvara redan vid luckornas öppnande och godsets undersökning.

43. Råkar fartyg i sjönöd, vare befälhafvaren pligtig att göra allt hvad i hans magt står för dess bevarande och må icke öfvergifva det, så länge hopp om dess räddning finnes. Är räddning omöjlig och faran så hotande, att han nödgas öfvergifva fartyget, åligge honom att i synnerhet sörja för dagbokens och skeppshandlingarnes bevarande äfvensom att draga försorg om bergning af fartyg och gods och att dertill söka anskaffa nödigt biträde.

Eger bergning rum, har befälhafvaren att leda bergningsarbetet, der icke sådant genom ortens lag är honom förbjudet eller genom aftal om bergningen förhindras. Öfver allt, som bergas, så ock öfver antalet af manskap, som vid bergningen och vid godsets forsling till upplagsställe medverkar, samt det dervid utförda arbetet före befälhafvaren, sjelf eller genom styrmannen, noggranna anteckningar; vare ock skyldig att granska och genom sin påskrift till riktigheten bestyrka alla för bergningen afgifna kostnadsräkningar.

Befälhafvaren låte, så snart ske kan, anordna besigtning, i den ordning 41 § bestämmer, af fartyget och af det bergade godset och sörje för att detta sättes under lämplig vård.

44. Befälhafvaren skall behandla sina underordnade så, som en god hufvader anstår, och vid anordnande af det arbete, som erfordras, så vidt ske kan, taga hänsyn till enhveres ställning i tjensten. Kroppslig aga må han ej tilldela någon.

Befälhafvaren låte sig angeläget vara, att bön och guds-

## Danish Text.

Should there be any reason to fear that goods have been damaged during the voyage, the master shall cause a survey to be made before the goods are delivered to the consignee.

43. When the ship is in distress, it is the master's duty to do everything in his power to save the ship, and he must not leave it as long as there is any hope that it may be saved. Should salvage be impossible and the danger so threatening that he is obliged to abandon the ship, it is his duty particularly to see that the logbooks and the ship's papers are saved; besides, he must take measures for the salvage of the ship and goods, and for that purpose try to get the necessary assistance.

Should salvage be effected, the master is to conduct the salvage operations, unless the laws of the place or a special salvage contract prevents him from doing so. The master must either himself or through the mate note exactly down everything saved and also take a note both of the number of persons assisting in the salvage and of the transport of the saved goods to the place where they are to be stored; he shall, moreover, as far as possible examine and under his signature attest the correctness of the accounts of expenses occasioned by the salvage, the transport and storing of the goods.

The master has as soon as possible to cause a legal survey to be made of the ship and the goods saved, and shall see that the latter are properly taken care of.

44. The master shall treat his subordinates in a decent manner, and in apportioning the work to be performed, he shall as far as possible take into consideration the position on board of each man. Corporal punishment must not be inflicted on anybody.

The master shall take special care that prayers and divine

## Norwegian Text.

in Norway be appointed by the Byfoged (judge of the municipal court) or the Sheriff; in foreign countries the rules of the preceding Article shall apply. If there is reason to fear that goods have been damaged during the voyage, the master shall cause a survey to be held before delivering the goods to the consignee.

43. When the ship is in distress at sea the master shall do everything in his power to preserve it, and he must not leave the ship so long as there is any hope of saving it. If this is impossible, and the danger so imminent that he is compelled to quit the ship, he shall take special care to save the log-books and the ship's papers. He ought also to exert himself to save the ship and cargo and try to procure the assistance required for that purpose.

If salvage operations are instituted, the master shall conduct the operations, if not prevented from so doing by the law of the place, or by any special salvage agreement concluded by him. The master shall, either personally or through the mate, make an accurate inventory of the property saved, and a list of the number of persons assisting at the salvage and the transportation of the goods to the place where they are to be stored, and he shall, so far as possible, examine and certify under his hand the correctness of the accounts presented relative to the salvage, the transportation and the storage of the goods.

The master shall likewise, at the earliest opportunity, have a survey according to law held of the ship and the goods saved, and take the best possible measures for the preservation of the goods.

44. The master shall treat his subordinates in a befitting manner, and in apportioning the work between them, pay due regard so far as is possible, to the rank of each seaman on board. He must not inflict corporal punishment on anybody.

On Sundays and other festivals set apart as holy-days

## Swedish Text.

called in question whether the damage has been caused through faults in the stowing of the cargo, or the caulking of the hatchways, or through any other similar fault, the master shall require the presence of the surveyors already at the opening of the hatchways and the examining of the goods.

43. When the ship is in distress the master is bound to do everything in his power to save and protect the vessel, and shall not abandon her as long as there is hope of salvage. Should salvage be found impossible, and the danger be so threatening that the master is obliged to abandon the ship, it shall be his duty particularly to see that the logbook and the ship's documents are saved, and to take measures for the salvage of ship and cargo, for which purpose he ought to summon the necessary assistance.

Should salvage take place, the master shall conduct the salvage operations, unless it is prohibited by the laws of the place or the salvage contract prevents him from so doing. The master shall either himself or through the mate carefully note down everything saved and also take a note both of the number of men assisting in the salvage and the carrying off of the goods to the storing place, and of all the work done; and the master shall moreover examine, and under his signature attest, the correctness of all the accounts of expenses incurred in the salvage.

The master shall, as soon as possible, cause a survey to be instituted in the manner prescribed in Art. 41 for the examination of the ship and of the goods saved, and shall see that the latter are properly taken care of.

44. The master shall treat his subordinates kindly and in apportioning the work to be performed, he shall, as far as possible, take into consideration the position on board of each man. The master may not inflict corporal punishment.

The master shall take special care that prayers and divine

Gudstjeneste om Bord ikke forsummes, og at Arbejde, ud over hvad der fordres til Skibets Sikkerhed og Manøvrering, Maskinens Betjening og Efter-syn, sædvanlig Rengøring, Sejltorring, fornøden Baadtjeneste, samt Kostens Tilberedning, ikke paalægges Mandskabet paa Søndage eller andre her i Riget anordnede Helligdage, for saa vidt saadant Arbejde kan opsættes.

45. Skipperen skal paase, at Mandskabet erholder god og tilstrækkelig Kost, og han har i den Henseende at underkaste sig det Reglement, som af Kongen udfærdiges. Finder han det under Rejsen nødvendigt at mindske Kosten, har Mandskabet Krav paa billig Erstatning.

I det nævnte Reglement bliver tillige at træffe nærmere Bestemmelser vedrørende Skibmandskabets Opholdsrum om Bord.

46. Dør nogen af Mandskabet, skal Skipperen drage Omsorg for hans Begravelse. Han bør derhos vidnefast lade optage Fortegnelse over alt, hvad den Afdøde har efterladt om Bord; dette kan han, naar Dødsfaldet indtræffer uden for Riget, aflevere til Konsulen eller anden vedkommende Myndighed paa Stedet, eller sælge, hvis han ikke uden Ulempe kan beholde det om Bord.

47. Gør nogen til Skibet hørende Person eller nogen Passager sig skyldig i en Forbrydelse, som er Genstand for offentlig Paatale, og Skibet ikke er i indenlansk Havn, skal Skipperen snarest muligt optage en foreløbig Forklaring saavel af den skyldige som af Mandskabet eller andre, som

der saavidt muligt gives Anledning til Gudstjeneste ombord.

Arbejde udover, hvad der udfordres til Skibets Sikkerhed og Manøvrering, Maskinens Betjening, nødvendig Sejltorring, fornøden Baadtjeneste samt Kostens Tilberedning, maa ikke paalægges Mandskabet paa saadanne Dage, medmindre det er paatrængende nødvendigt, hvortil ikke henregnes, at Skibet ved Befragtningskontrakten er forbundet til at laste eller losse paa Son- og Helligdage.

45. Skibsføreren skal paase, at Mandskabet faar god og tilstrækkelig Kost, og har i den Henseende at underkaste sig det Reglement, som udfærdiges af Kongen. Findes det under Rejsen nødvendigt at mindske Kosten, har Mandskabet Krav paa billig Erstatning.

Skibsføreren har ligeledes at iagttage de Sundhedsforskrifter, som med Hensyn til Mandskabets Opholdsrum ombord eller i andre Maader gives af Kongen.

46. Dør nogen af Mandskabet, skal Skibsføreren drage Omsorg for hans Begravelse. Han bør derhos vidnefast lade optage Fortegnelse over Alt, hvad den Afdøde har efterladt ombord. Naar Dødsfaldet indtræffer udenfor Riget, skal han aflevere denne Fortegnelse til nærmeste Konsul. Efterladenskaberne bliver, saafremt de ikke uden Ulempe kan beholdes ombord, enten ligeledes at overgive til Konsulen eller at sælge paa fordelagtigste Maade.

han efter ankomsten till svensk hamn har att redovisa inför ombudsmannen vid sjömanshuset i fartygets hemort.

47. Gør nogen til Skibet hørende Person eller nogen Passager sig skyldig i grovere Forbrydelse, og Skibet ikke er i norsk Havn, skal Skibsføreren snarest muligt optage en foreløbig Forklaring saavel af den skyldige som af Mandskabet eller andre, som kan give Oplysning derom. Er Forbrydel-

tjenst ombord icke försummas; å söndagar eller andra här i riket brukliga helgdagar må han icke ålägga besättningen arbete som kan tåla uppskof.

45. Befälhafvaren skall tillse, att besättningen erhåller god och tillräcklig kost i enlighet med den för besättningarna å svenska handelsfartyg fastställda spisordning. Finner befälhafvaren under resa nödvändigt att nedsätta kosten, ege han rätt dertill; dock skall besättningen därför undfå skälig ersättning, hvilken i händelse af tvist bestämmas af skiljemän.

46. Dör sjöman under det han är i tjänst, besörje befälhafvaren om hans begravning, så ock om uppteckning af hvad han å fartyget efterlemnadt. Kan ej kvarlåtenskapen genast aflemnas till delegarne i boet eller till annan för deras räkning, och kan den ej heller utan skada eller olägenhet behållas ombord till dess sådant aflemnande kan ega rum, bör befälhafvaren antingen öfverlemnna den till närmaste svenske konsul eller på lämpligt sätt låta försälja densamma, för hvilket

47. Begär någon, som är å fartyget anställd eller medföljer såsom passagerare, när fartyget icke befinner sig i svensk hamn, brott af den art, att svärare straff än fängelse derå kan följa, skall befälhafvaren, der icke brottet af ortens myndighet beifras, i närvaro af två de bäste männen ombord hålla förhör

ad § 45 D. Jfr. Noten til § 26.

N. Jfr. Forskrifter om Kosten af 24 November 1905. Angaaende Mandskabets Opholdsrum m. v. se Loven af 8 September 1909 §§ 43—46 og kgl. Res. af s. D.

S. Se om Spiseordningen kgl. Forordning af 17 April 1896.

ad § 46. Ang. Sømandshus jfr. Noten til § 35.

## Danish Text.

service are not neglected on board, and that on Sundays and other days kept holy in the Kingdom no work which may be postponed is imposed on the crew, beyond what is necessary for the safety and the manœuvres of the vessel, the working and inspection of the engine, the usual cleansing, the drying of sails, the necessary boat-service and the preparation of food.

45. The master shall see that the crew gets good and sufficient food and must in that respect subject himself to the regulations given by the King. If, during a voyage, he thinks it necessary to reduce the allowance, the crew may demand a reasonable compensation.

In the above regulations further provisions are to be made regarding the crew's quarters on board.

46. If any of the crew dies, the master has to look after his burial. It is also his duty in the presence of witnesses to cause an inventory to be made of everything the deceased leaves on board; when death takes place out of the Kingdom, the master may deliver the effects of the deceased to the Consul or any other competent authority at the place or sell them, if he cannot keep them on board without inconvenience.

47. If any person belonging to the ship or accompanying it as a passenger commits a crime against which action may be brought by the authorities, and the ship is not in a Danish harbour, the master shall as soon as possible previously examine the criminal as well as the crew and any other

## Norwegian Text.

in Norway, Divine Service shall, if possible, be held on board.

With the exception of what work is required for the safety and working of the ship, the management of the engines, the necessary drying of sails, the necessary drying of the food, the preparation of the food, no work shall be imposed on the crew on such days, unless it is of urgent necessity, which, however, does not include any obligation undertaken in the charter-party to load or unload on Sundays and holidays.

45. The master shall see that good and sufficient food is served to the crew, and he shall in this respect comply with such dietary regulations as may be issued by the King. If during the voyage it is found necessary to reduce the rations, the seamen shall be entitled to a reasonable compensation.

The master shall likewise comply with such sanitary regulations as may be issued by the King concerning the space for accommodation occupied by the seamen, or in other respects.

46. If a seaman dies, the master shall see that he is buried. He ought also to make an inventory, and have it signed by witnesses, of all property and effects left by the seaman on board. If the death occurs abroad he shall deliver this list to the nearest Consul. The effects shall, if they cannot conveniently be kept on board, either be delivered to the Consul, or sold as profitably as possible.

be sold in a suitable manner, and he shall, on the arrival at a Swedish port, render an account of the Mercantile Marine Office belongs.

47. If any person belonging to the ship, or any passenger, commits an offence of a serious character, the master shall, if the ship is not in a Norwegian port, as soon as possible take the provisional dispositions of the offender, the members of the crew and other persons able to give informa-

## Swedish Text

service are not neglected on board, and he shall not, on Sundays or any other days kept holy in this Kingdom, impose on the crew any work which can be postponed.

of sails, the boat service required of the food, no work shall be imposed on the crew on such days, unless it is of urgent necessity, which, however, does not include any obligation undertaken in the charter-party to load or unload on Sundays and holidays.

45. The master shall see that the crew receive good and sufficient food in accordance with the scale of provisions fixed for Swedish merchant ships. If during a voyage the master considers it necessary to reduce the allowance, he shall have the right to do so, but the crew shall for such reduction receive a reasonable compensation, the amount of which, in case of dispute, shall be settled by arbitration.

46. If a seaman dies whilst in service, the master shall look after his burial and see that an inventory is taken of his effects left on board. If the property cannot immediately be delivered to the person or persons interested in the estate, or to any other person for their account, nor be kept on board without inconvenience or danger of its becoming damaged, until it can thus be delivered, the master shall either deliver the property to the nearest Swedish Consul, or cause it to

thereof to the Superintendent of the port to which the ship

47. If any person engaged on board or accompanying the ship as passenger commits any offence of a character incurring heavier penalty than imprisonment, the master shall, when the ship is not in a Swedish harbour and where the offence is not prosecuted by the authorities of the place, exa-

To § 45 D. Cf. the note to § 26.

N. Cf. the regulations concerning food of 24th November 1905. Concerning the accommodation of the crew etc. see the Law of 8th September 1909 §§ 43—46 and the Roy. Res. of the same date.

S. See concerning the regulations in regard to meals the Royal Ordinance of 17th April 1896.

To § 46. Concerning the "Mercantile Marine Offices" cf. the note on § 35.

derom kunne give Oplysning. Er Forbrydelsen begaaet paa fremmed Territorium, skal saadan Forklaring dog kun optages, hvis Forbrydelsen ikke forfølges af Stedets Myndigheder. Forklaringen indføres i Dagbogen eller optegnes skriftlig, hvis Dagbog ikke føres, under Iagttagelse af de i § 103 foreskrevne Former.

sen begaaet paa fremmed Territorium, skal saadan Forklaring dog kun optages, hvis Forbrydelsen ikke forfølges af Stedets Myndigheder. Forklaringen indføres i Dagbogen eller optegnes skriftlig, hvis Dagbog ikke føres, under Iagttagelse af de i § 103 foreskrevne Former.

med den brottslige och dervid jemväl söka erhålla all den upplysning angående brottet, som af besättningen eller af andra personer kan lemnas. Hvad vid förhöret förekommer skall skriftligen upptecknas och det antecknade, sedan det blifvit för de närvarande uppläst, till riktigheten bestyrkas genom deras underskrift. Föres dagbok ombord, skall anteckningen ske i denna.

Skipperen har saa vidt muligt at sikre sig den skyldiges Tilstedeværelse og kan i saadan Hensigt om fornødent inde-spærre ham eller anvende andre Midler, men er ansvarlig for, at han ikke behandles strengere, end Ojemedet kræver.

Skibsføreren har saavidt muligt at sikre sig den Skyldiges Tilstedeværelse og kan i saadan Hensigt om fornødent inde-spærre ham eller anvende andre Midler, men er ansvarlig for, at han ikke behandles strengere, end Ojemedet kræver.

Befälhafvaren skall tillse, att den brottslige icke lemnar fartyget, och ege för sådant ändamål, der det pröfvas nödigt, hålla honom i fängsligt förvar ombord till dess han kan till konsul eller till polismyndighet här i riket öfverlemnas; befälhafvaren vare dock ansvarig, att den brottslige ej behandlas strängare än nödigt är.

Hvis Forbrydelsen begaas i udenlandsk Havn, hvor der er dansk Konsul, eller naar Skibet, efter at Forbrydelsen er begaaet, anløber saadan Havn, skal Skipperen snarest muligt gøre Anmeldelse til Konsulen om den begaaede Forbrydelse og tilstille ham en bekræftet Genpart af den optagne Forklaring. Konsulen undersøger da Sagen og bestemmer, hvad der videre skal foretages. Naar Henvendelse til Konsul i udenlandsk Havn ikke har fundet Sted, bør Skipperen snarest muligt efter Hjemkomsten gøre Anmeldelse for Øvrigheden.

Hvis Forbrydelsen begaas i udenlandsk Havn, hvor der er norsk Konsul, eller Skibet, efter at Forbrydelsen er begaaet, anløber saadan Havn, skal Skibsføreren snarest muligt gjøre Anmeldelse til Konsulen og i Tilfælde meddele ham en bekræftet Gjenpart af den optagne Forklaring. Konsulen undersøger da Sagen og bestemmer, hvad der videre skal foretages. Naar Henvendelse til Konsul i udenlandsk Havn ikke har fundet Sted, bør Skibsføreren snarest muligt efter Hjemkomsten gjøre Anmeldelse for Øvrigheden.

48. I Forhold til Tredjemand er Skipperen i denne sin Egenskab, naar Skibet befinder sig uden for Hjemstedet, berettiget til for Rederens Regning at afslutte alle Retshandler, der angaa Foranstaltninger, som sigte til Rejsens Udførelse, saasom Skibets Udrustning, Proviantering og Vedligeholdelse saa og til at bortfragte Skibet samt til paa Rederens Vegne at optræde som Sagsøger i Skibets Anliggender.

48. I Forhold til Tredjemand er Skibsføreren i denne sin Egenskab, naar Skibet befinder sig udenfor Hjemstedet, berettiget til for Rederens Regning at afslutte alle Retshandler, der angaar Foranstaltninger, som sigter til Rejsens Udførelse, saasom Skibets Udrustning, Proviantering og Vedligeholdelse, saavel som til at bortfragte Skibet og paa Rederens Vegne optræde som Sagsøger i Skibets Anliggender.

48. I förhållande till tredje man ege befälhafvaren i denna sin egenskab, när fartyget befinner sig utom hemorten, för redarens räkning sluta aftal och ingå förbindelser angående allt sådant, som afser resans ut förande, såsom fartygets utrustning, proviantering och underhåll, äfvensom att bortfrakta fartyget och att å redarens vägnar kära i mål, som angå fartyget.

I under Foranstaltninger, som sigter til Rejsens Udførelse, indgaar ikke et Fiske- eller Fangstlartøjs Forsyning med Gjenstande, som alene vedkommer Fisket eller Fangsten, saasom Garn, Liner, Agn, Is, Salt og Tønder.

Forer af Fartøi, som udelukkende eller hovedsagelig benyttes til Fiske eller Fangst, og hvis Bruttodrægtighed ikke overstiger et Hundrede og femti Registerton, kan ikke, naar Skibet er indenfor Rigets Grænser, uden særlig Bemyndigelse anskaffe Kul, Petroleum, Bensin eller anden Olje for Rederens Regning.

## Danish Text.

person who might be able to furnish any information. If the crime has been committed within the territory of a foreign State, an examination as aforesaid is only to be made if action against the crime is not brought by the authorities of the place. The deposition is to be entered in the logbook or put down in writing, if a logbook is not kept in conformity with the formalities prescribed in § 103.

## Norwegian Text.

tion concerning it. If the offence has been committed on foreign territory, such depositions shall only be taken when the offender is not prosecuted by the local Authorities. The statements made shall be entered in the log-book or, if no log-book is kept, be noted down in writing in conformity with the rules prescribed in § 103.

## Swedish Text.

mine the offender in the presence of two of the best men on board, and at such examination he shall also try to obtain all the information regarding the offence which can be furnished by the crew or any other person or persons. Whatever is stated at the said examination shall be taken down in writing and the correctness of the minutes shall be certified by the signatures of the persons present, after having been duly read to them. If a logbook is kept on board the minutes shall be entered therein.

The master has as far as possible to secure the presence of the criminal, and for such purpose he has the right, whenever it is deemed necessary, to shut the criminal up or employ other expedients, but he is responsible for the criminal not being treated more severely than necessary.

If the crime is committed in a foreign port, where a Danish Consul is appointed, or the ship, after the crime having been committed, calls at such port, the master shall as soon as possible report the crime committed to the Consul, and hand him a certified copy of the examination. The Consul then inquires into the matter and decides on what is further to be done. In case the master has not applied to a Consul in a foreign harbour, he shall, as soon as possible after his return home, report the matter to the authorities.

48. As regards a third party, the master has the right in his capacity of master, when abroad, to enter into agreements and engagements on behalf of the owner in all matters concerning the due completion of the voyage such as the outfit, the provisioning and maintenance of the ship and also its chartering; further he has the power to plead on the owner's behalf in cases relating to the ship.

The master shall, if possible, secure the person of the offender and for such purpose may, if necessary, lock him up or employ other measures, but shall be responsible for his not being treated more severely than required by circumstances.

If the crime is committed in a foreign port where there is a Norwegian Consul, or if the ship calls at any such port after the crime has been committed, the master shall, as soon as possible, give notice thereof to the Consul and deliver to him a certified copy of the despositions taken. The Consul shall then inquire into the case and decide on the further proceedings to be taken. If the master has not applied to a Consul in a foreign port he shall, as soon as possible after his return to Norway, report the case to the Authorities.

48. In relation to a third party the master shall, in his capacity as master, when the ship is not in the home port, be entitled to undertake, on account of the owners, all transactions in respect to measures destined to promote the performance of the voyage, such as fitting out and victualling the ship, and maintaining it in a proper condition, to charter the ship, and to act as prosecutor in actions at law on behalf of the owners in matters relating to the ship.

48. As regards a third party the master shall have the right, in his capacity of master, when abroad, to enter into agreements and engagements on behalf of the owners on all matters concerning the due completion of the voyage, such as the outfit, maintenance, and provisioning of the ship, as also her chartering, and further he shall have the power to act and plead on behalf of the owners in all cases relating to the ship.

Amongst the measures destined to promote performance of the voyage are not included the providing of such objects of a fishing, whaling or sealing vessel as only concern the fishing or catching, as for example nets, lines, bait, ice, salt and barrels.

The master of a vessel exclusively or mainly used for fishing and catching, the gross tonnage of which does not exceed one hundred and fifty register tons, shall not, when the vessel is within the borders of the Kingdom, without special authorization take in coals, petroleum, benzole or other oil for the account of the owners.

Paa Skibets Hjemsted kan Skipperen ikke uden særlig Bemyndigelse indgaa Retsandler, der forpligter Rederen, naar undtages, at han kan hyre Mandskab.

49. Udkræves der Penge til noget Ojemed, som i § 48 nævnt, er Skipperen berettiget til at optage Laan eller til at sælge af Redernes Gods eller endog af Ladningen. At Skipperen ikke har haft Føje til at gøre Laan eller sælge af Godset, har ingen Indflydelse paa Laangivers eller Købers Ret, naar denne efter Omstændighederne maa antages at have handlet i god Tro.

50. Uden Rederens Samtykke kan Skipperen ikke sælge Skibet, medmindre det efter lovlig Besigtigelse, jfr. § 41, er bleven erklæret for uistandsætteligt. Salget skal ske ved offentlig Auktion.

51. At Rederen har gjort særlig Indskrænkning i den Skipperen ifølge §§ 48—49 tilkommende almindelige Fuldmagt, kan ikke paaberaabes mod Tredjemand, naar denne har været i god Tro.

52. Skipperen skal stadig give Rederen Underretning om Skibets Tilstand, Rejsens Fremgang, afsluttede Retsandler og overhovedet om enhver Begivenhed, som kan være af Interesse for Rederen. I alle vigtige Tilfælde bør han, for saa vidt Omstændighederne tillader det, indhente Ordre fra Rederen selv eller den, til hvem denne har henvist ham. Kræves der Penge til Skibets Behov, og Rederens Ordre ikke kan afventes, skal Skipperen søge dem tilvejebragt paa den for Rederen billigste Maade; kun i yderste Nodsfald maa han sælge af Ladningen.

Paa Skibets Hjemsted kan Skibsforeren ikke uden særlig Bemyndigelse indgaa Retsandler, der forpligter Rederen, naar undtages, at han kan hyre Mandskab. (*Lov af 18 sept. 1909.*)

49. Udkræves der Penge til noget Ojemed, som i § 48 nævnt, er Skibsforeren berettiget til at optage Laan eller til at sælge af Rederens Gods eller endog af Ladningen. At Skibsforeren ikke har havt Foie til at gøre Laan eller sælge af Godset, har ingen Indflydelse paa Laangiverens eller Kjøberens Ret, naar denne efter Omstændighederne maa antages at have handlet i god Tro.

50. Uden Rederens Samtykke kan Skibsforeren ikke sælge Skibet, medmindre det efter lovlig Besigtigelse, jfr. § 41, er bleven erklæret for uistandsætteligt. Salget skal ske ved offentlig Auktion.

51. At Rederen har gjort særlig Indskrænkning i den Skibsforeren ifølge §§ 48 og 49 tilkommende almindelige Fuldmagt, kan ikke paaberaabes mod Tredjemand, naar denne har været i god Tro.

52. Skibsforeren skal stadig give Rederen Underretning om Skibets Tilstand, Reisens Fremgang, afsluttede Retsandler og overhovedet om enhver Begivenhed, som kan være af Interesse for Rederen. I alle vigtige Tilfælde bør han, forsaavidt Omstændighederne tillader det, indhente Ordre fra Rederen selv eller den, til hvem denne har henvist ham. Kræves der Penge til Skibets Behov, og Rederens Ordre ikke kan afventes, skal Skibsforeren søge dem tilvejebragt paa den for Rederen billigste Maade; kun i yderste Nodsfald maa han sælge af Ladningen.

I fartygets hemort ege befälhafvaren icke utan särskildt bemyndigande ingå annat aftal för redarens räkning, än angående besättningens förhållande.

49. Uppstår, när fartyget befinner sig utom hemorten, behöf af penningar för ändamål, som i 48 § är sagdt, ege befälhafvaren anskaffa nödiga medel genom lån eller genom att sälja af redarens gods eller af lasten. Har befälhafvaren utan laga anledning upptagit lån eller verkställt försäljning, eller har han upptagit större lån eller sålt mer, än behöfvet kräfd, vare det utan verkan till förringande af långifvares eller köparens rätt, der lånet upptagits eller försäljningen skett under sådana omständigheter, att långifvaren eller köparen må antagas hafva varit i god tro.

50. Utan redarens samtycke må befälhafvaren icke försälja fartyget i annat fall, än när fartyget efter vederbörlig besigtning blifvit förklaradt icke vara istandsättligt. Försäljningen skall i ty fall ske genom offentlig auktion.

51. Har redaren genom särskild föreskrift inskränkt den befogenhet, som enligt 48, 49 och 50 §§ tillkommer befälhafvaren i denna hans egenskap, må sådan inskränkning icke åberopas mot tredje man i annat fall, än när denne icke varit i god tro.

52. Befälhafvaren skall under resans förtgång gifva redaren underrättelse om fartygets tillstånd, resans förlopp, derunder slutna aftal och ingångna förbindelser samt angående allt, hvarom kännedom eljest kan vara till nytta för redaren. Innan åtgärder af vikt vidtagas, bör han, der omständigheterna det medgifva, inhemta föreskrift af redaren själf eller det ombud, denne anvisat. Erfordras penningar för fartygets behöf och kan icke redarens föreskrift afvaktas, åligge befälhafvaren att till medlens anskaffande anlita den utväg, som för redaren är för-



## Danish Text.

In the port to which the ship belongs, the master cannot, unless specially authorized to do so, enter into any agreement by which the owners are bound, with the exception of the engagement of the crew.

49. Should money be wanted for any of the purposes mentioned in § 48, the master has the right to raise a loan or to sell from the owner's goods or even from the cargo. The right of the lender or purchaser is in no way influenced by the fact of the master having had no valid reason to raise the loan or to sell of the goods, provided the former according to circumstances may be supposed to have acted in good faith.

50. A master may not without the owner's consent sell the ship unless it has been by a legal survey, cfr. § 41, declared not worth repairing. The sale is to be effected by public auction.

51. If the owner, by any special stipulation, has limited the powers with which the master according to §§ 48—49 is usually invested, such restriction may not be pleaded against a third party, if the latter has acted in good faith.

52. The master shall constantly keep the owner informed of the condition of the ship, the progress of the voyage, agreements and obligations entered into and everything else that may be of interest to the owner. In all important questions he should as far as circumstances permit, procure instructions from the owner or from the person to whom the owner may have referred him. If money is needed for the requirements of the ship, and the owner's orders cannot be waited for, the master must try to get the money in the cheapest manner for the owner;

## Norwegian Text.

In the port to which the ship belongs the master cannot, without special authority, bind the owners by any engagement, except that of hiring the crew. (*Law of 18 Sept. 1909.*)

49. If money is wanted for any such purpose as is referred to in § 48, the master shall be entitled to raise loans, or to dispose of the property of the owners or even the cargo. Where the master has not had cause to make the loan or dispose of the goods, the rights of the lender or the buyer in respect thereto shall not be thereby affected, if, under the circumstances, the lender or buyer must be considered as having acted in good faith.

50. The master is not entitled, without the consent of the owners, to sell the ship, unless, after a lawful survey (§ 41), it has been declared unfit for repair. The sale shall take place by public auction.

51. If, by special reservations, the owners have limited the authority vested in the master by virtue of §§ 48 and 49, such reservations cannot be used as a plea against the action of a third party, when the latter has acted in ignorance thereof.

52. The master shall keep the owners continually informed of the condition of the ship, the progress of the voyage, transactions performed, and other subjects of interest to the owners. On all questions of importance he must, if circumstances permit, obtain the orders of the owners, or of the person to whom he has been addressed by them. If money is required for the use of the ship, and the orders of the owners cannot be awaited, the master shall try to procure such money at the least possible expense to the owners, and

## Swedish Text.

In the port to which the ship belongs, the master shall have no right to enter into any agreement on behalf of the owners, save and except for the engagement of the crew, unless specially authorized so to do.

49. Should money be wanted when the ship is away from the port to which she belongs, for any of the purposes mentioned in Art. 48, the master shall have the right to procure the necessary means by loan or by selling part or parts of what belongs to the owners, or of the cargo. In case the master has borrowed money or effected any sale without valid reason, or has raised a larger sum, or sold more than required for the occasion, the validity of the rights of the lender or purchaser will thereby in no way be affected, provided the loan has been raised or the sale effected under such circumstances that the lender or purchaser must be supposed to have been acting bona fide.

50. A master may not sell the ship without the consent of the owners in any other case than when she has been declared not worth repairing, after having been duly surveyed. The sale shall in such case be made by public auction.

51. Should, by any special stipulation, the owners have limited the powers enjoyed by the master in his capacity of master under Arts 48, 49 and 50, such restriction shall not apply as regards a third party, unless such party has not been acting in good faith.

52. During the progress of the voyage the master shall keep the owner informed respecting the condition of the ship, what has taken place during the voyage, the agreements and obligations entered into, and everything else which may be of use for the owner to know. Before taking any important steps he should, where circumstances admit, take instructions from the owner or his appointed agent. If money is needed for the requirements of the ship, and the master cannot wait for the owners' instructions, he shall adopt the course least

enad med minsta uppoffring; ej må han utan i yttersta nödfall föryttra något af lasten.

Varder fartyget å utländsk ort taget i måt eller för gäld

belagdt med qvarstad, och finnes af skeppshandlingarne, att fartyget är för gäld intecknadt, åligger befälhafvaren att ofördröjligen om utmätningen eller qvarstaden underrätta inteckningshafvaren, der denne är för honom känd.

Huruledes bevis om inteckningsåtgärd må biläggas skeppshandlingarne, derom förordnar Konungen. (*Lag af 10 Maj 1901.*)

53. Skipperen skal under Rejsen drage Omsorg for Ladningen og i det hele varetage Ladningsejerens Interesse.

54. Skipperen er uden særlig Fuldmagt berettiget til for Ladningsejerens Regning at indgaa Forpligtelser angaaende Foranstaltninger, der sigte til Ladningens Bevaring eller Viderebefordring, saa og til paa Ladningsejerens Vegne at optræde som Sagsøger i Sogsmaal, som angaa Ladningen. Bliver det til Fremme af nogen saadan Foranstaltning nødvendigt at rejse Penge, er Skipperen berettiget til for Ladningsejerens Regning at optage Laan eller endog at sælge af Ladningen.

For de Forpligtelser, Skipperen saaledes indgaar for Ladningsejerens Regning, hæfter denne alene med det indladede Gods.

55. Naar det i Tilfælde, som omhandles i § 41, ved lovligt Skøn godtgøres, at Ladningen er i den Tilstand, at den ikke kan opbevares uden Fare for Bedærvelse, er Skipperen berettiget til at sælge den. Er Skibet forulykket eller erklæret uistandsætteligt, kan Salg ogsaa finde Sted, naar Skonnet gaar ud paa, at Omkostningerne ved Opbevaring eller Viderebefordring vilde blive for store i Forhold til Ladningens Værdi.

56. At Ladningsejeren har gjort særlig Indskrænkning i den Skipperen ifølge §§ 54—55 tilkommende almindelige Fuldmagt, kan ikke paaberaabes mod Tredjemand, naar denne har været i god Tro.

57. Forinden Skipperen til Ladningens Behov optager Laan

53. Skibsføreren skal under Reisen drage Omsorg for Ladningen og i det Hele varetage Ladningsejerens Tarv.

54. Skibsføreren er uden særlig Fuldmagt berettiget til for Ladningsejerens Regning at indgaa Forpligtelser angaaende Foranstaltninger, der sigter til Ladningens Bevaring eller Viderebefordring, samt til at optræde som Sagsøger paa Ladningsejerens Vegne i Sogsmaal, som angaar Ladningen. Bliver det nødvendigt at rejse Penge til nogen saadan Foranstaltning, er Skibsføreren berettiget til for Ladningsejerens Regning at optage Laan eller endog at sælge af Ladningen, og gjælder i saa Fald, hvad der i § 49, 2det Punktum er bestemt.

For de Forpligtelser, Skibsføreren saaledes indgaar for Ladningsejerens Regning, hæfter denne alene med det indladede Gods.

55. Naar det i de Tilfælde, som omhandles i § 41, ved lovligt Skøn godtgøres, at Ladningen er i saadan Tilstand, at den ikke kan opbevares uden Fare for Bedærvelse, er Skibsføreren berettiget til at sælge den. Er Skibet forulykket eller erklæret for uistandsætteligt, kan Salg ogsaa finde Sted, naar Skjønnet gaar ud paa, at Omkostningerne ved Opbevaring eller Viderebefordring vilde blive for store i Forhold til Ladningens Værdi.

56. At Ladningseieren har gjort særlig Indskrænkning i den Skibsføreren ifølge §§ 54 og 55 tilkommende almindelige Fuldmagt, kan ikke paaberaabes mod Tredjemand, naar denne har været i god Tro.

57. Forinden Skibsføreren til Ladningens Behov optager

53. Befälhafvaren skall under resan hafva noggrann vård om lasten samt i öfrigt iakttaga lastegarens rätt och bästa.

54. I förhållande till tredje man ege befälhafvaren i denna sin egenskap att under resan för lastegarens räkning ingå förbindelser angående allt sådant, som afser lastens bevarande eller vidare fortskaffande, så ock att å lastegarens vägnar kära i mål, som angå lasten. Uppstår behof af penningar för ändamål, som nyss är sagdt, ege han anskaffa nödiga medel genom lån eller genom att sälja af lasten; och gälle i ty fall hvad i 49 § stadgas angående lån och försäljning för fartygets behof.

För de förbindelser, befälhafvaren sålunda för lastegaren ingår, häfte denne allenast med det inlastade godset.

55. Finnes last vid derå jemlikt 41 § anställd besigtning vara i det tillstånd, att den icke utan fara för förskämning kan förvaras, ege befälhafvaren försälja lasten; har fartyget förölyckats eller förklarats icke vara istandsättligt, må, ändå att godset utan skada kan förvaras, försäljning ega rum, der vid besigtningen utrönes, att kostnaden för godsets förvarande eller fortskaffande till bestämmelseorten skulle blifva alltför hög.

56. Har lastegare genom särskild föreskrift inskränkt den befogenhet, som enligt 54 och 55 §§ tillkommer befälhafvaren i denna hans egenskap, må sådan inskränkning icke åberopas mot tredje man i annat fall, än när denne icke varit i god tro.

57. Innan befälhafvaren för lastens behof upptager lån eller

## Danish Text.

he may only in cases of utmost need sell from the cargo.

## Norwegian Text.

he must not dispose of the cargo except in cases of the most urgent need.

## Swedish Text.

detrimental to the owners. The master shall not sell any of the cargo except in cases of utmost need.

If the ship is seized or arrested for debt abroad, and duty of the master to notify the seizure or arrest.

the ship's papers show that the ship is mortgaged, it is the mortgagee, if known to him, without delay, of the

The King will direct in what manner a certificate of mortgage may be appended to the ship's papers. (*Law of the 10th of May, 1901.*)

53. The master has to take care of the cargo during the voyage and upon the whole to look after the interest of the cargo-owner.

54. The master has without special powers the right, at the expense of the cargo-owner to enter into agreements concerning the preservation or further conveyance of the cargo as well as to sue on his behalf in cases affecting the cargo. Should it be necessary to raise money for any such purpose, the master has the right to make a loan on the cargo-owner's account or even to sell from the cargo.

For the engagements thus entered into by the master on the cargo owner's account, the latter is only responsible with the goods loaded.

55. Should it in the case mentioned in § 41 be established by a legal survey, that the cargo is in such a condition that it cannot be kept without risk of deterioration, the master has the right to sell the same. If the ship has been lost or declared a total loss, a sale may also be effected, should the survey prove that the cost of the preservation and further conveyance would be too great in proportion to the value of the cargo.

56. If the cargo-owner has limited the powers with which the master according to §§ 54 to 55 is usually invested, such restriction cannot be pleaded against a third party, provided the latter has acted in good faith.

57. Previous to raising any loan or selling from the goods

53. The master shall take good care of the cargo during the voyage, and generally protect the interests of the owners of the cargo.

54. Without any special authority from the owners of the cargo, the master shall be entitled to enter into engagements on their behalf concerning measures to be taken with a view to the preservation or the further transportation of the cargo. He is likewise entitled to act as prosecutor on behalf of the owners of the cargo in lawsuits concerning the cargo. If money be required for any such purpose, the master shall be entitled to raise loans on account of the owners of the cargo, or even to dispose of the goods, in which case the rules of the 2nd section of § 49 shall apply.

The liabilities thus incurred by the owners in consequence of the acts of the master shall not be personal but limited solely to the goods shipped.

55. When in the cases enumerated in § 41, the cargo is found, by a lawful survey, to be in such a condition that it cannot be stored without the risk of damage, the master shall be entitled to sell the goods. If the ship is lost or declared unfit for repairs, the goods may also be sold, if it is declared by the surveyors that the expenses of warehousing or further transportation thereof would be too great in proportion to the value of the goods.

56. If, by any special reservations, the owners of the cargo have limited the power vested in the master by virtue of §§ 54 and 55, such reservations cannot be used as a plea against the action of a third party when the latter has acted in ignorance thereof.

57. The master shall, previous to raising a loan for the

53. The master shall take great care of the cargo during the voyage, and besides look after the rights and interests of the owner of the cargo.

54. In matters relating to a third party, the master shall, in his capacity of master, have power to enter into agreements on behalf of the owner of the cargo during the voyage as regards the preservation or further conveyance of the cargo, as also to sue in cases affecting the cargo. Should money be required for any of the last mentioned purposes, the master shall have the power to procure the necessary means by loan or by selling from the cargo, and in such cases the prescriptions contained in Art. 49 regarding loan and sales for the requirements of the ship shall also apply.

For such obligations entered into by the master on behalf of the owner of the cargo the latter is only responsible with the cargo taken on board.

55. Should the cargo, on being surveyed in conformity with Art. 41, be found to be in such a state that it cannot be kept without risk of deterioration, the master shall have the right to sell the same. If the ship has been lost or been declared a constructive total loss, the sale may take place, although the property could be kept without danger of deterioration, should the survey prove that the cost of its preservation and conveyance to the port of destination would be too excessive.

56. If the power vested in the master according to Arts. 54 and 55 has, by any special instruction, been limited by the owner of the cargo, such restriction may not be pleaded against a third party, except in case such party has not been acting in good faith.

57. Previous to taking any loan or selling from the cargo

eller sælger af Godset, eller i øvrigt træffer nogen særlig Foranstaltning for Ladningsejerens Regning, bør han saa vidt muligt indhente Ordre af denne eller af den, til hvem han er henvist.

Laan eller sægler af Godset eller iøvrigt træffer nogen særlig Foranstaltning for Ladningsejerens Regning, bør han saavidt muligt indhente Ordre fra denne eller fra den, til hvem han er henvist.

försäljer något af godset eller eljest vidtager särskild åtgärd för lastegarens räkning, bör han, såvida ske kan, inhämta föreskrift af lastegaren eller det ombud, denne anvisat.

Er Skibet forulykket eller erklæret uistandsætteligt, paaligger det Skipperen for Ladningsejerens Regning, for saa vidt denne ikke har Fuldmægtig paa Stedet, og hans Ordre ikke kan afventes, efter Omstændighederne enten at forsende Godset til Bestemmelsesstedet paa billigste Maade eller at oplægge eller sælge det.

Er Skibet forulykket eller erklæret for uistandsætteligt, paaligger det Skibsføreren for Ladningsejerens Regning, for saavidt denne ikke har Fuldmægtig paa Stedet, og hans Ordre ikke kan afventes, efter Omstændighederne enten at forsende Godset til Bestemmelsesstedet paa billigste Maade eller at oplægge eller sælge det.

Har fartyget förölyckats eller förklarats icke vara istandsättligt, åligge befälhafvaren, der lastegaren icke har ombud på stället och hans föreskrift icke kan afvaktas, att, efter omständigheterna, antingen mot den lindrigaste frakt, som kan betingas, försända godset med annan lägenhet till betämmelseorten eller låta upplägga eller försälja godset.

Salg af Last skal saa vidt muligt ske ved offentlig Auktion.

Salg af Last skal saavidt muligt ske ved offentlig Auktion.

Försäljning af last bör, såvida ske kan, ega rum å offentlig auktion.

58. Skipperen hæfter ikke personlig for de Forpligtelser, som han i denne sin Egenskab indgaar paa Reders eller Ladningsejers Vegne.

58. Skibsføreren hefter ikke personlig for de Forpligtelser, som han i denne sin Egenskab indgaar paa Rederens eller Ladningsejerens Vegne.

58. Befälhafvaren svare icke för de förbindelser, han i denna sin egenskap å redares eller lastegares vägnar ingått.

59. Skipperen er pligtig at erstatte al Skade, som paafores Reder eller Ladningsejer ved Fejl eller Forsømmelse i Opfyldelsen af de Pligter, der paa hvile ham over for dem, og at han har handlet efter Ordre, fritager ham ikke for Ansvar undtagen over for den, som har givet Ordren. Om end Beslutning er fattet i Skibsraad, er han selv ansvarlig for de Foranstaltninger, der træffes.

59. Skibsføreren er pligtig til at erstatte al Skade, som paafores Rederen eller Ladningseieren ved Svig, Forsømmelse eller Uagtsomhed i Opfyldelsen af de Pligter, der paa hviler ham overfor dem. At han har handlet efter Ordre, fritager ham ikke for Ansvar undtagen overfor den, som har givet Ordren. Omend Beslutning er fattet i Skibsraad, er han selv ansvarlig for de Foranstaltninger, der træffes.

59. Befälhafvaren skall vid fullgörandet af de skyldigheter, honom med afseende å fartyg och last åligga, iakttaga den omsorg, som tillhör en god sjöman. All skada och förlust, som genom hans fel eller försummelse tillskyndas redare eller lastegare, vare han pligtig att ersätta; har han i ty fall handlat efter redarens föreskrift, ege han icke mot lastegaren åberopa sådan föreskrift till sitt fredande från ansvarighet. Har åtgärd vidtagits på grund af beslut, som i skeppsråd fattats, vare befälhafvaren ensam ansvarig för åtgärden.

Ligeledes er han ansvarlig for Skade, som af Mandskabet forvoldes ved Fejl eller Forsømmelse i Tjenesten, medmindre det maa antages, at han ikke har ladet det mangle paa behørig Opmærksomhed og Tilsyn.

Ligeledes er han ansvarlig for Skade, som forvoldes af Mandskabet ved Svig, Forsømmelse eller Uagtsomhed i Tjenesten, medmindre det maa antages, at han ikke har ladet det mangle paa behørig Opmærksomhed og Tilsyn.

60. Naar Skibet efter endt Rejse er kommet til Hjemstedet, og ellers saa ofte Rederen forlanger det, er Skipperen pligtig at aflegge Regnskab. Vil Rederen gøre Indsigelse mod Regnskabet, maa han gøre det ved Søgemaal inden 6 Maaneder efter dets Modtag-

60. Skibsføreren har, forinden han forlader Havn, at meddele Rederen, hvor meget hver af Mandskabet har oppebaaret paa Hyren.

60. När fartyget efter slutad resa ankommit till hemorten, så oek eljest när redaren det åskar, skall befälhafvaren afgifva redovisning. Vill redaren klandra redovisning, göra det genom stämning inom sex månader efter det han mottog den samma; försittes den tid, hafve

## Danish Text.

for the requirements of the cargo, or otherwise adopting any special measure on behalf of the cargo-owner, the master should as far as possible procure the orders of the cargo-owner or the person to whom he has been referred.

If the ship has been lost or declared a total loss, it is the duty of the master at the expense of the cargo-owner, in case the latter has no agent on the place and his instructions cannot be awaited, according to circumstances, either to forward the goods to the port of destination by the cheapest mode of conveyance, or to cause it to be stored or sold.

The sale of cargo is as far as possible to be effected by public auction.

58. The master is not personally responsible for the obligations he has entered into in his capacity of master on behalf of the owner or of the owner of the cargo.

59. It is the master's duty to compensate for any damage sustained by the owner or the cargo-owner through fault or neglect on his part in the fulfilment of his duties towards them, and the fact that he has acted upon instructions does not exempt him from responsibility, except in relation to the person who has given the instructions. Even if a resolution has been taken in a general sea council, the master is himself responsible for the measures which have been adopted.

The master is also responsible for the damage caused through any fault or neglect on the part of the crew in the service, unless there is reason to suppose that he has not been wanting in due attention and supervision.

60. When the ship arrives at its port of registry on the due completion of its voyage, or whenever the owner so desires, the master must give in his account. If the owner wishes to make objections to the account, he must do so by summons within 6 months

## Norwegian Text.

requirements of the cargo, or selling the goods for such requirements, or in any other way adopting any special measures on behalf of the owners of the cargo, if possible obtain instructions from such owners or from the party to whom he is addressed.

If the ship is wrecked, or declared to be unfit for repair, the master is bound, at the cost of the owners of the cargo, provided the latter have not any agent at the spot and instructions from such owners cannot be awaited, either to forward the goods to their place of destination in the cheapest manner, or to store or sell them according to circumstances.

The sale of cargo shall, if possible, take place by public auction.

58. The master is not personally responsible for the obligations undertaken by him in his capacity of master, on behalf of the owners of the ship or the goods.

59. The master shall make good all loss sustained by the owners of the ship or the goods in consequence of any fraud, misconduct or negligence of which he may have been guilty in the performance of his duty to them. The fact of his having acted according to orders shall not release him from such responsibility, except in respect to the person by whom the orders have been given. Even when a resolution has been passed at a sea council, the master shall be personally responsible for the measures taken in consequence thereof.

He shall also be responsible for any damage caused by any fraud, misconduct or negligence of which the members of the crew may, while in service, have been guilty, unless there is reason to suppose that the master has not been wanting in due attention and supervision.

60. Before leaving any port the master shall inform the owners of the amount each seaman has been paid out of the wages due to him. The accounts of the master shall be rendered each voyage, and otherwise whenever required by the owners.

## Swedish Text.

for the requirements of the cargo, or otherwise adopting any special measure on behalf of the owner of the cargo, the master shall, when practicable, ask for instructions from the owner of the cargo or his appointed agent.

If the ship has been lost or declared a constructive total loss, it is the duty of the master, when the owner of the cargo has no agent on the spot, or his instructions cannot be awaited, according to circumstances, either to forward the goods by the cheapest mode of conveyance to the port of destination, or to cause the same to be stored or sold.

The sale of a cargo should, if possible, be effected by public auction.

58. The master is not personally responsible for the obligations he has entered into in his capacity of master on behalf of the owners or of the owner of the cargo.

59. In the fulfilment of his duties regarding ship and cargo, the master shall take all the care and pains expected from a good seaman. All damage and loss that the owners of ship or cargo may sustain through his fault or neglect he must make good to them. If in such case the master has acted upon the owners' instructions he cannot plead such instructions in order to escape responsibility to the owner of the cargo. If any measure has been taken in consequence of a decision passed by a general council on board, the master shall alone be responsible for the measure.

60. When the ship arrives at her port of Registry on the due completion of her voyage, or whenever the owner so wishes, the master shall deliver account. If the owner desires to disapprove of the account, he shall do so by summons within six months from the

else; oversiddes denne Frist, kan der ikke mere rejses Indsigelse, medmindre Svig eller Regnefejl oplyses.

6 Maaneder efter dets Modtagelse, Sogsmaal til Indtale af Belob, hvorimod Udsættelse af Hjemkomst. Oversiddes disse Regnskabet, medmindre Svig

I Regnskabet skal Skipperen, naar ikke andet er vedtaget, godskrive Rederiet enhver særskilt Godtgørelse, som han har modtaget af Befragter, Ladningsejer, Leverandør eller andre, med hvem han i Egenskab af Skipper har haft at gøre.

61. Skipperen kan til enhver Tid afskediges. Ejer han selv mere end en Halvpart i Skibet, kan Retten paa en Parfreders Begjæring afsætte ham, om dertil findes skellig Grund.

Har Skipperen uden at overskride sin Myndighed paataget sig personlig Forpligtelse til Bedste for Skib eller Ladning, er han ikke pligtig at fratræde Tjenesten, forinden Rederiet har stillet ham Sikkerhed for det deraf flydende Ansvar.

62. En Skipper, som ikke er antagen for bestemt Rejse eller for bestemt Tid, og hvis Kontrakt ikke indeholder nogen Bestemmelse om Opsigelse eller Fratrædelse, kan opsiges sin Tjeneste, naar Skibet er kommet til indenlandsk Havn, og Rejsen der er endt. Har han været i Tjenesten i 3 Aar, uden at Skibet i denne Tid har endt nogen Rejse i Hjemlandet, er han berettiget til at opsiges Tjenesten med den løbende Rejses Ende, naar dette sker saa betimeligt, at der levnes Rederiet rimelig Tid og Lejlighed til at skaffe en anden Fører af Skibet. Bestemmer Rederiet, straks efter at have modtaget Skipperens Opsigelse, at Skibet fra den Havn, hvor Skipperen vil fratræde, skal vende tilbage til Hjemlandet, er han forpligtet til at føre Skibet hjem, efter at det der paa Stedet har indtaget Ladning, selv om denne paa Vejen skal afleveres i anden Havn.

Regnskab pligter Skibsføreren at aflægge for hver Reise og ellers, saa ofte Rederen forlanger det.

Rederen har at gjøre sine Udsættelser ved Regnskabet inden 6 Maaneder efter dets Modtagelse. Sogsmaal til Indtale af Belob, hvorimod Udsættelse af Hjemkomst. Oversiddes disse Regnskabet, medmindre Svig

I Regnskabet skal Skibsføreren godskrive Rederiet enhver særskilt Godtgørelse, som han har modtaget af Befragter, Ladningsejer, Leverandør eller Andre, med hvem han i Egenskab af Skibsfører har havt at gjøre.

61. Skibsføreren kan til enhver Tid afskediges. Eier han selv mere end Halvparten i Skibet, kan Retten paa en Parfreders Begjæring afsætte ham, om dertil findes skellig Grund.

Har Skibsføreren uden at overskride sin Myndighed paataget sig personlig Forpligtelse til Bedste for Skib eller Ladning, er han ikke pligtig til at fratræde Tjenesten, forinden Rederiet har stillet ham Sikkerhed for det deraf flydende Ansvar.

62. En Skibsfører, som ikke er antagen for bestemt Reise eller paa bestemt Tid, og hvis Kontrakt ikke indeholder nogen Bestemmelse om Opsigelse eller Fratrædelse, kan opsiges sin Tjeneste, naar Skibet er kommet til indenlandsk Havn, og Reisen der er endt. I udenlandsk Havn kan Skibsføreren ogsaa opsiges sin Tjeneste, naar Rederiet gives mindst 6 Maaneders Varsel, og Skibsføreren erstatter de med den nye Skibsførers Ansættelse forbundne Omkostninger.

redaren sin rätt till klander för-  
lorat.

I redovisning skall befälhaf-  
varen föra redaren till godo all  
särskild godtgörelse, som han  
erhållit af befraktare, lastegare,  
leverantörer eller andra, med  
hvilka han i sin egenskap af be-  
fälhafvare haft att skaffa, der  
han icke fått redarens uttryck-  
liga medgifvande att den be-  
hålla.

61. Befälhafvaren kan när  
som helst skiljas från sin be-  
fattning. Är han själf delegare  
i fartyget till mer än hälften,  
ege domstol på medredares kä-  
romål skilja honom från befatt-  
ningen, om giltiga skäl dertill  
äro.

62. Är befälhafvare icke an-  
tagen för bestämd resa eller för  
bestämd tid och innehåller icke  
heller eljest tjensteaftalet nå-  
gon bestämmelse om hans rätt  
att lemna tjensten, skall han  
quarstanna i tjenst till dess far-  
tyget ankommit till svensk  
hamn, der resan slutar; dock  
ege han, der han varit i tjenst  
tre år utan att fartyget under  
tiden slutat någon resa i svensk  
hamn, rätt att lemna fartyget  
vid pågående resas slut, så vida  
han förut uppsäger tjensten i  
så god tid, att redaren erhåller  
nödigt rådrum för anskaffande  
af befälhafvare i hans ställe.  
Förordnar redaren, när befäl-  
hafvaren sålunda uppsäger tjen-  
sten, att fartyget från den ort,  
der denne egde lemna tjensten,  
skall återvända till hemlandet,  
vare befälhafvaren pligtig att  
föra fartyget dit, äfven om last  
förut skall intagas å den ort,  
der han egde lemna fartyget,  
eller å annan, i fartygets hem-  
väg belägen ort, samt derefter  
utlossas i hamn under resan.

## Danish Text.

## Norwegian Text.

## Swedish Text.

after receipt; after this term no objection can be made any more, unless fraud or errors in the account be pointed out.

Exceptions taken by the owners to the accounts shall be notified within 6 months after their reception.

date of receiving it, after which time he loses his right by default.

to which such exception has return home of the master. accounts in question can be

Legal proceedings to secure the repayment of any amount been taken, must be instituted. When such term of grace is subsequently raised, unless discovered in them.

within 6 months after the exceeded no objections to the fraud or miscalculation is

The master shall in his account, unless otherwise provided, give the owners credit for all extra remuneration received from charterers, owners of cargo, contractors or any other person, with whom he has had to deal in his capacity of master.

The master shall credit the account of the owners with each separate remuneration which he has received from the charterers, the owners of the cargo, purveyors or others with whom, in his capacity of master, he has had dealings.

The master shall credit the owner in his account with all extra remuneration received from charterers, owners of cargo, contractors or any other person with whom he has to deal in his capacity of master, unless he has had the owners' special consent to retain it.

61. The master may be dismissed at any time. Should he himself possess more than one half of the ship, the Court may, upon the request of a part-owner, dismiss him, should there be sufficient reason for doing so.

61. The master may be dismissed at any time. If the master is himself the owner of more than one moiety of the ship, the Court may, at the request of a part-owner, dismiss him, if it finds reason to do so.

61. The master can at any time be dismissed. Should he be part-owner holding more than one half, the Court shall, upon the request of the co-owners, dismiss him, should there be valid reason for doing so.

Should the master without infringement of the power with which he is invested have incurred any personal liability for the benefit of the ship or the cargo, he is not obliged to resign his service before the owners have given him security for the responsibility resulting thereof.

If the master has, without exceeding his authority, incurred any personal liability for the good of the ship or the cargo, he shall not be obliged to leave the service of the ship until the owners have given him security for all responsibility consequent thereon.

62. A master who is not engaged for any particular voyage or for a fixed term, and whose contract does not contain any clause regarding his right to leave service, may give notice, when the ship has arrived at a Danish port, and the voyage is terminated. If the master, however, has been in the service for three years, and the ship during this time has not been in a Danish port, he has the right to give notice at the completion of the voyage upon which the ship is engaged, if he does it in so good time as to enable the owners to procure another master for the ship. If the owners, immediately after having received the notice of the master, order the ship to return home from the port where the master wants to leave, the latter is bound to take the vessel home after its having been loaded in that place, even if the cargo loaded is to be discharged in another port during the voyage.

62. A master who is not appointed for a stated voyage or for a fixed term, whose agreement with the owners does not contain any stipulation as to notice to leave, or retirement, may give notice to leave the service when the ship arrives at a Norwegian port and the voyage is there completed. In a foreign port the master may also leave the service of the ship on giving the owners at least six months' notice of his intention to do so, and on compensating the owners for the expenses incurred in connection with the appointment of the new master.

62. If the master is not engaged for any particular voyage or for a fixed term and the agreement respecting his service does not otherwise contain any condition as to his right of leaving office, he shall remain on until the ship arrives at a Swedish harbour where the voyage is finished; the master to have the right, however, to leave the vessel on the completion of the voyage upon which she is engaged, should he have been in service for three years, during which time none of the voyages have finished in a Swedish port, provided always, that he gives notice sufficiently early as to enable the owner to procure a master in his place. If the owner, when the master thus resigns, orders the ship to return home from the place where the master had the right to leave the service, the latter is obliged to take the vessel home, even if a cargo is previously to be loaded in the port where he had the right to leave the ship, or in any other port on the homeward voyage,

Skal Losning finde Sted, maa Skipperen ikke fratræde, for end denne er endt.

Mister Skibet Retten til at føre dansk Flag, er Skipperen berettiget til straks at fratræde.

63. Afskediges Skipper paa Grund af Uduelighed, Fejl eller Forsømmelse i Tjenesten, tilkommer der ham kun Hyre indtil Afskedigelsen.

Det samme gælder, naar Grunden til hans Afskedigelse er den, at Rejsen eller dens Fortsættelse opgives eller for længere Tid opsættes formedelst Krig, Blokade, Embargo, Ud- eller Indforselsforbud, Ishindring eller Skade, som gør Skibet udygtigt til Rejsen.

Naar Skibet forulykker, kon- demneres, opbringes og pris- dommes eller tages af Sjøro- vere, ophører Skipperens Tjeneste- forhold og dermed hans Ret til videre Hyre. Dog paaligger det ham i Ulykkestilfælde at forblive paa Stedet, indtil de Skib og Ladning vedrørende An- liggende ere ordnede, men han har da Krav paa passende Godt- gørelse i den Tid, som hertil medgaar, mindst den bestemte Hyre foruden frit Ophold og fri Forplejning eller Kostpenge.

64. Afskediges Skipperen paa Grund af Sygdom eller Beskadigelse, som gør ham uskik- ket til Fører, tilkommer der ham Hyre til Afskedigelsen.

Paadrager Skipperen sig, me- dens han er i Tjenesten, ufor- skyldt Sygdom eller Beskadig- else, er Rederiet pligtig at be- koste hans Kur og Plege ogsaa efter Afskedigelsen, dog ikke over 4 Uger efter denne, hvis den finder Sted her i Riget eller paa Sted i Udlandet, hvor han i Medfør af Kontrakten skulde fratræde, men ellers 8 Uger.

Skal Losning finde Sted, maa Skibsføreren ikke fratræde, for Losningen er endt.

Mister Skibet Retten til at føre norsk Flag, er Skibsføreren berettiget til straks at fratræde.

63. Afskediges en Skibsfører paa Grund af Uduelighed, Svig, Forsømmelse eller Ugatsomhed i Tjenesten, tilkommer der ham kun Hyre indtil Afskedigelsen.

Det samme gælder, naar Grunden til hans Afskedigelse er den, at Rejsen eller dens Fort- sættelse opgives eller for læn- gere Tid opsættes paa Grund af Krig, Blokade, Embargo, Ud- eller Indforselsforbud, Ishin- dring eller Skade, som gjør Ski- bet udygtigt til Rejsen.

Naar Skibet forulykker, kon- demneres, opbringes og prise- dommes eller tages af Sjøro- vere, ophører Skibsføreren Tje- nesteforhold og dermed hans Ret til videre Hyre. Dog paa- ligger det ham i Ulykkestil- fælde at forblive paa Stedet, indtil de Skib og Ladning ved- rørende Anliggender er ord- nede; men han har da Krav paa passende Godtgjørelse i den Tid, som medgaar hertil.

64. Afskediges Skibsføreren paa Grund af Sygdom eller Beskadigelse, som gjør ham uskik- ket til Fører, tilkommer der ham Hyre til Afskedigelsen.

Paadrager Skibsføreren sig, medens han er i Tjenesten, ufor- skyldt Sygdom eller Beskadig- else, er Rederiet pligtigt til at bekoste hans Kur og Pleie ogsaa efter Afskedigelsen, dog ikke over 4 Uger efter denne, hvis den finder Sted her i Riget eller paa Sted i Udlandet, hvor han i Medfør af Kontrakten skulde fratræde, men ellers 12 Uger.

Skall last lossas i hamn, der befälhafvaren, efter ty nu är sagdt, eger frånträda tjensten, må han icke lemna fartyget förrän lossningen afslutats.

Försäljes fartyget till ut- ländsk man eller upphör det annorledes att vara svenskt, ege befälhafvaren strax från- träda tjensten.

63. Afskedas befälhafvare på grund af oduglighet eller för- sommelse i tjensten, ege han åtnjuta hyra allenast för den tid, han varit i tjänst.

Lag samma vare, der befäl- hafvare afskedas därför att re- san inställes till följd af krig, blockad, embargo, ut- eller införselsförbud, ishinder eller skada, som gör fartyget odug- ligt för resan, eller därför att fartyget af sådan anledning för längre tid uppehålls i afgångs- hamnen eller under resa.

Förolyckas fartyget, eller varder det efter timad skada förklaradt icke vara iståndsätt- ligt, eller uppbringas det och prisdömes, eller tages det af sjöröfvare, upphöre tjensteaf- talet att vara/gällande och be- fälhafvaren erhålle hyra till och med den dag, då tjenstgöringen upphörde; dock åligger honom att efter timad sjöolycka, mot åtnjutande af skälig godt- görelse, qvarstanna å olycks- stället till dess de fartyget och lasten rörande angelägenheter blifvit ordnade.

64. Afskedas befälhafvare på grund af skada eller sjukdom, som gör honom oförmögen att föra fartyget, erhålle han hyra för tiden intill afskedandet.

För skada eller sjukdom, som befälhafvaren utan eget vål- lande ådrager sig medan han är i tjänst, ege han åtnjuta vård på redarens bekostnad, jemväl efter det han lemnat tjensten, dock icke under längre tid efter afskedandet än fyra veekor.



## Danish Text.

## Norwegian Text.

## Swedish Text.

If cargo is to be discharged, the master must not leave the ship before the discharging is finished.

If the ship loses its right to carry the Danish flag, the master has the right to leave the service at once.

**63.** If a master is dismissed on account of inability, faults or neglect in the service, he is only to receive wages until dismissal.

This will also apply if the master is dismissed owing to the voyage having been discontinued, deferred for any considerable length of time or altogether given up on account of war, blockade, embargo, prohibition of export or import, hindrance by ice, or any damage making the vessel unfit for the voyage.

If the ship is wrecked, condemned, captured and declared a good prize or taken by pirates, the agreement regarding the master's service ceases to be in force and thereby his right to receive further wages. In case an accident has occurred, he must, however, remain at the place of casualty until all matters regarding the ship and the cargo have been arranged, but he may then claim a reasonable compensation for the time spent, at least the salary agreed upon besides free board and lodging or board wages.

**64.** If the master is dismissed on account of illness or injury received which makes him unfit to command the ship, he shall receive his wages up to the date of his dismissal.

For any illness or injury sustained by no fault of his own, while in service, the owners are bound to defray the expenses of the master's medical treatment and nursing, even after his dismissal, though not for more than a term of 4 weeks, if the dismissal takes place in the Kingdom or in a place abroad where he should leave according to the contract, otherwise 8 weeks.

If the ship is to discharge cargo the master must not quit his post before the goods have been discharged.

If the ship loses its right of carrying the Norwegian flag, the master shall be entitled to leave at once.

**63.** If a master is dismissed on account of incapability, fraud, or negligence or carelessness while in the service of the ship, he shall only be entitled to wages up to the time of his dismissal.

The same rule shall apply if he is dismissed because the voyage is given up, or not continued, or put off for a long time on account of war, blockade, embargo, prohibition of imports or exports, detention by ice, or damage which unfits the ship for the voyage.

If the ship is wrecked, condemned, captured or condemned as a prize, or taken by pirates, the service of the master, and, consequently, his right to further wages, shall cease. In the case of a casualty having occurred he must, however, remain on the spot until the affairs of the ship and the cargo have been settled, but he is entitled to reasonable compensation for the time thus passed.

**64.** If a master is dismissed on account of illness, or injuries which incapacitate him from commanding the ship, he shall be entitled to wages up to the date of his dismissal.

If, during his service on board the ship, the master has, through no fault of his own, contracted an illness, or been injured, the owners shall pay the expenses of his medical treatment and attendance also after his dismissal, but not for more than 4 weeks after the date of his dismissal when such takes place in Norway, or at a place in a foreign country where, according to the agree-

and thereupon be discharged in any port during the voyage.

If cargo is to be discharged at the port where the master, as aforesaid, has the right to resign, he shall not leave the ship before the discharging is duly completed.

Should the ship be sold to a foreign subject or otherwise cease to be a Swedish ship, the master has the right immediately to leave the service.

**63.** If a master is dismissed on account of inability or neglect in the service, he is only to receive wages for the time actually served.

The same enactment is in force when a master is dismissed owing to the voyage being discontinued in consequence of war, blockade, embargo, prohibition of import or export, hindrance by ice or any damage rendering the vessel unfit for the voyage, or because the ship for any such reason is detained for any extended period at the port of departure or during the voyage.

In the ship is wrecked or declared a constructive total loss subsequent to damage being incurred, or if the ship is captured and declared a good prize, or taken by pirates, the agreement regarding the service ceases to be in force and the master receives his wages up to the day his service ceased. In case an accident has occurred the master shall however remain at the place of the casualty, in consideration of reasonable compensation, until the matters concerning ship and cargo have been arranged.

**64.** If the master is dismissed on account of injury received or illness, rendering him unable to command the ship, he shall receive wages up to the date of dismissal.

For any injury or illness sustained by no fault of his own, when in service, the master shall be nursed at the expense of the owners, even subsequent to leaving the service, though not for a longer time than four weeks after the dismissal.

65. Afskediges Skipperen, uden at nogen af de i §§ 63 og 64 nævnte Grunde er til Stede, har han Krav paa den hele ham tilsagte Hyre. Var han antagen paa ubestemt Tid, har han foruden Hyre for den Tid, han har været i Tjenesten, Krav paa Tillægshyre for en Maaned, hvis han afskediges her i Riget til anden Tid, end han efter § 62 selv var berettiget til at fratræde, eller i en udenlandsk Havn ved Ostersøen eller Nordsoen, for 2 Maaneder, hvis han afskediges i anden europæisk Havn, og for 3 Maaneder, hvis Afskedigelsen finder Sted i Havn uden for Europa, dog at i denne Henseende de ved Middelhavet, det sorte og det asovske Hav uden for Europa beliggende Havne regnes lige med europæiske.

Samme Regel gælder, naar Skipperen fratræder sin Tjeneste, fordi Skibet har mistet Retten til at fore dansk Flag.

66. Naar i de Tilfælde, som omhandles i § 65, Skipperens Tjeneste ophører paa andet Sted end i Kontrakten vedtaget eller forudsat, er han berettiget til at Rederiet at forlange Godtgørelse for de med Reise til Forhyringsstedet, hvis han er antagen her i Riget, men ellers til Skibets Hjemsted forbundne Udgifter, derunder indbefattet Kostpenge. Det samme gælder, naar Skipperen i Tilfælde, som omhandles i § 63, 2det Stykke, afskediges i Udlandet, ligesom ogsaa naar han lades tilbage i Udlandet paa Grund af Sygdom, for saa vidt Rederiet efter § 64 er pligtigt at bekoste hans Pleje.

Er Skibet i Udlandet forulykket eller efter lidt Havari

65. Afskediges Skibsføreren, uden at nogen af de i §§ 63 og 64 nævnte Grunde er tilstede, har han Krav paa hele den ham tilsagte Hyre. Var han antagen paa ubestemt Tid, tilkommer der ham, foruden Hyre for den Tid, han har været i Tjenesten, endvidere Tillægshyre

for 1 Maaned, hvis han afskediges i en Havn her i Riget til anden Tid, end han efter § 62 selv var berettiget til at fratræde, eller i en Havn ved Ostersjøen eller Nordsjøen,

for 2 Maaneder, hvis han afskediges i en anden europæisk Havn, og

for 3 Maaneder, hvis Afskedigelsen finder Sted i en Havn udenfor Europa. De ved Middelhavet, det sorte Hav og det azovske Hav udenfor Europa beliggende Havne regnes i denne Henseende lige med europæiske.

Samme Regel gjælder, naar Skibsføreren fratræder sin Tjeneste, fordi Skibet har mistet Retten til at fore norsk Flag.

66. Naar i de Tilfælde, som omhandles i § 65, Skibsførerens Tjeneste ophører paa andet Sted end i Kontrakten vedtaget eller forudsat, er han berettiget til at forlange Godtgørelse af Rederiet for de med Reise til Forhyringsstedet, hvis han er antaget her i Riget, men ellers til Skibets Hjemsted, forbundne Udgifter, derunder indbefattet Kostpenge. Det samme gjælder naar Skibsføreren i de Tilfælde, som omhandles i § 63, 2det Stykke, afskediges i Udlandet, ligesom ogsaa, naar han lades tilbage i Udlandet paa Grund af Sygdom, forsaavidt Rederiet efter § 64 er pligtigt at bekoste hans Pleje.

Er Skibet i Udlandet forulykket eller efter lidt Havari er

65. Afskedas befälhafvare utan att sådant skäl, som i 63 eller 64 § omförmäles, dertill föranlett, ege han, derest han antagits för viss resa eller viss tid eller tjensteaftalet eljest innehåller bestämmelse angående tjenstetidens längd, tillgodonjuta den hyra, som genom aftalet tillförsäkrats honom; innehåller aftalet icke någon bestämmelse om tjenstetidens längd och afskedas befälhafvaren annanstädes än i svensk hamn, der han jemlikt 62 § egde erhålla entledigande, ege han, utöfver hvad af hans hyra redan är förtjent, undfå sådan för en månad, om han afskedas i hamn här i riket eller i utländsk hamn vid Östersjön eller Nordsjön, för två månader om afskedandet eger rum i annan europeisk hamn, samt för tre månader, om detsker i hamn utom Europa; dok att i sådant hänseende de vid Medelhafvet, Svarta hafvet och Azovska sjön utom Europa belägnahamnar räknas lika med enropeiska.

Lag samma vare, der befälhafvare lemnar tjensten derföre att fartyget upphört att vara svenskt.

66. I de fall, 65 § omförmäler, ege befälhafvaren, derest han lemnar tjensten å annan ort, än der han jemlikt tjensteaftalet egde erhålla entledigande, undfå godtgörelse för den kostnad, som beräknas åtgå för resa till förhyrningsorten, om han antagits här i riket, men eljest till fartygets hemort, äfvensom för underhåll under resan. Lag samma vare, der befälhafvare å utländsk ort afskedas af anledning, som i 63 § andra stycket sägs, eller han å sådan ort för sjukdom qvarlemnats, såvida redaren enligt 64 § var pligtig att bekosta hans vårdande.

Har fartyget å utländsk ort förolyckats eller tagits af sjöröf-

Danish Text.

Norwegian Text.

Swedish Text.

65. If the master is dismissed without any of the reasons mentioned in §§ 63 and 64, he may claim the whole salary guaranteed according to agreement. In case he has been engaged for an indefinite time, he has the right to claim additional wages for one month, if dismissed at a port in the Kingdom at another time than that at which he, according to § 62, has the right to leave the service, or in a foreign port in the Baltic or North Sea; for two months if the dismissal takes place in any other European port; and for three months should he be discharged in a port out of Europe; in this respect the ports in the Mediterranean, the Black Sea and the Sea of Azov situated out of Europe, are considered as European ports.

The same rule is to be followed in case the master leaves the ship because the ship has lost its right to carry the Danish flag.

66. If in the cases mentioned in § 65 the master's time of service ceases at another place than that agreed upon or supposed in the contract, the master has the right to claim of the owners compensation for the calculated travelling expenses to the port of engagement, if engaged in the Kingdom, otherwise to the port to which the ship belongs, comprising board wages during the voyage. The same regulation shall be in force if the master in the cases mentioned in § 63 Sect. 2 is dismissed in a foreign country or is left behind in such country on account of illness, provided the owners are bound to defray the cost of his nursing in accordance with § 64.

The aforesaid expenses shall be paid by the exchequer if

ment, he was to leave the ship, but until 12 weeks after the said date when the agreement is otherwise.

65. When the master is dismissed under any other circumstances than those referred to in §§ 63 and 64, he shall be entitled to the whole amount of the wages for which he has stipulated. If not engaged for any fixed term he shall receive, besides his wages for the time during which he has served on board, the following additional wages:

for one month, if he is dismissed in a Norwegian port at any other time than that when, according to § 62, he is himself entitled to leave the ship, or in a Baltic or North Sea port;

for two months when dismissed in any other port in Europe, and

for three months, when dismissed in a port out of Europe; Mediterranean ports or ports on the Black Sea and the Sea of Azov being, however, in this respect, considered as European ports.

The same rule shall apply when the master leaves on account of the ship having lost its right to carry the Norwegian flag.

66. When, in the cases referred to in § 65, the service of the master is terminated at any other place than that agreed to or assumed by the terms of the contract, he is entitled to demand compensation from the owners for his travelling expenses, including subsistence money, to the place at which he was engaged if in Norway, but, otherwise, to that port to which the ship belongs. The same rule shall apply when in the cases referred to in the second section of § 63, the master is dismissed in a foreign country, or left behind abroad on account of illness, provided the owners are bound, according to § 64, to pay for his care and maintenance.

If a ship is wrecked abroad, or declared unfit for repairs

65. If a master is dismissed, without any of the grounds referred to in Art. 63 or 64 being the actual cause of dismissal, he shall receive the wages guaranteed according to agreement, in case he has been engaged for any particular voyage or for a certain time, or should the agreement regarding the service otherwise contain any condition respecting the length of service. Should there be no stipulation in the agreement regarding the length of service, and the master be dismissed in any other than a Swedish port, where by right he should obtain his discharge according to Art. 62, the master shall, in addition to the wages earned, receive pay for one month if dismissed at a port in the Kingdom or a foreign port in the Baltic or North Sea; for two months if the dismissal takes place in any other European port; and for three months should he be discharged in any port out of Europe. In this respect the same rule as for European ports also applies to ports in the Mediterranean, the Black Sea and the Sea of Azov situated out of Europe.

The same regulation shall apply when the master leaves the service because the ship has ceased to be Swedish.

66. In the cases mentioned in Art. 65, the master shall receive compensation for the calculated travelling expenses to the port of engagement, if engaged in the Kingdom, otherwise to the port to which the ship belongs, as well as for subsistence during the voyage; provided that he leaves the service at any other port than that where he had the right to claim his discharge according to the agreement. The same regulation shall apply when the master is dismissed abroad on the ground referred to in Art. 63, sect. 2, or is left behind at such port on account of illness, provided the owner is obliged to defray the cost of his nursing in accordance with Art. 64.

The aforesaid expenses shall be paid from public funds if

erklæret for uistandsætteligt, eller tages Skibet af Sorovere, bestrides Hjemsendelsesomkostningerne af Statskassen; dette gælder ogsaa, naar Skibet opbringes og prisdømmes, saafremt Skipperen var uvidende om Krigens Udbrud, da han sidst gik til Søs, og dette da heller ikke var bekendt paa Afsejlingsstedet.

67. Naar Skipperen dør, regnes der ham Hyre til Dødsdagen. Er der i Tilfælde af Forlis Tvivl om denne, antages Ulykken og Døden at have fundet Sted ved Forløbet af Halvdelen af den Tid, som i Almindelighed medgaar for et Skib som det forulykkede til en Reise paa samme Aarstid fra det Sted, hvorfra der sidst havdes Efterretning om Skibet, til dettes Bestemmelsessted.

68. Er der i Stedet for eller foruden Hyre tilsagt Skipperen som Vederlag for hans Tjeneste Procenter af Skibets Fragt (Kaplak) eller Andel i anden Indtægt af Rejsen, skal han, naar Tjenesteforholdet ophører inden Rejsens Slutning, deraf have saa meget, som i Forhold til Rejsens Længde kan anses at falde paa den Tid, han var i Tjenesten. Har han efter § 65 Krav paa Hyre for længere Tid, beregnes denne efter Tjenestens Ophor i det hele med dobbelt Styrmandshyre, men med hans faste Skipperhyre, hvis denne er højere.

69. Naar Skibet er udklæret for en Reise og i øvrigt sejlferdigt, maa Skipperen ikke holdes tilbage for Gæld, og ej heller Beslag eller Udlæg gøres i nogen af hans om Bord værende Ejendele, som udkræves til Tjenesten om Bord.

klæret for uistandsætteligt, eller tages Skibet af Sjørøvere, bestrides Hjemsendelsesomkostningerne af Statskassen; dette gælder ogsaa, naar Skibet opbringes og prisdømmes, saafremt Skibsforeren var uvidende om Krigens Udbrud, da han sidst gik til søs, og dette da heller ikke var bekendt paa Afsejlingsstedet.

67. Naar Skibsforeren dør, beregnes der ham Hyre til Dødsdagen. Er der i Tilfælde af Forlis Tvivl om denne, antages Ulykken og Døden at have fundet Sted ved Forløbet af den Tid, som i Almindelighed medgaar for et Skib som det forulykkede til en Reise paa samme Aarstid fra det Sted, hvorfra der sidst havdes Efterretning om Skibet, til dettes Bestemmelsessted.

68. Er det i Stedet for eller foruden Hyre tilsagt Skibsforeren som Vederlag for hans Tjeneste Procenter af Skibets Fragt (Kaplak) eller Andel i anden Indtægt af Reisen, skal han, naar Tjenesteforholdet ophører inden Rejsens Slutning, deraf have saa meget, som i Forhold til hele Rejsens Længde kan anses at falde paa den Tid, han var i Tjenesten. Har han efter § 65 Krav paa Hyre for længere Tid, beregnes den efter Tjenestens Ophor i det Hele efter dobbelt Styrmandshyre, men efter hans faste Skibsforerhyre, hvis denne er højere. Bliver ingen Fragt at erlægge, bortfalder ogsaa de Skibsforeren tilstaaede Procenter af Fragten.

69. Naar Skibet er udklæret for en Reise og iøvrigt seilferdigt, maa Skibsforeren ikke holdes tilbage for Gjæld, og ej heller Beslag eller Udlæg gøres i nogen af hans ombordværende Eiendele, som udkræves til Tjenesten ombord.

vare eller efter timad skada förklarats icke vara istandsättligt, eller har fartyget efter uppbbringning förklarats för god pris och var icke, när fartyget sist lemnade hamn, krigets utbrott der kändt eller eljest befälhafvaren kunnigt, skall här omförmälda kostnad gäldas af allmänna medel.

67. Dör befälhafvare medan han är i tjenst, utgår hyran till dödsdagen; förolyckas fartyget med man och allt, utan att upplysning kan vinnas om tiden, då olyckan inträffade, skall vid beräkning af den hyra, som i ty fall bör utgå, olyckan anses hafva timat då hälften af den tid förlötit, som med sådant fartyg å sådan årstid skäligen bort åtgå för resa från det ställe, der fartyget sist afhördes, till bestämmelseorten.

68. Har befälhafvare betingat sig att såsom tjenstegodtgörelse bekomma viss andel af frakt eller annan inkomst, som af fartygets resa kan uppstå, ege han, der han lemnar tjensten före resans slut, af det belopp, som under resan förtjenas, erhålla så mycket, som i förhållande till resans hela längd belöper på den tid, han varit i tjenst. Är han jemlikt § 65 berättigad att erhålla aflöning för längre tid, skall aflöningen för tiden efter det han lemnade tjensten utgå med dubbla beloppet af förste styrmans hyra; dock att, der i tjensteaftalet utöfver omförmälda godtgörelse tillförsäkrats honom viss hyra, aflöningen för nämnda tid ej må sättas lägre, än hvad å samma tid belöper af hyran.

Uppstår tvist angående beräkning af den aflöning, som, efter ty nu är sagdt, bör tillkomma befälhafvaren, skall beloppet bestämmas af skiljemän.

69. Efter det fartyg utklærats och i öfrigt är segelfärdigt, må ej befälhafvaren för gäld hindras att afresa, ej heller något af hvad han för tjenstens behof fört ombord tagas i mät eller beläggas med kvarstad.

## Danish Text.

the ship, subsequent to having sustained damage, has been lost or declared a total loss, or been taken by pirates; this is also applicable if the ship is captured and declared a good prize, provided the outbreak of the war was not known to the master when he last put to sea, nor in the port from which the ship started.

67. Should the master die, his wages are to be paid up to the date of his death. Should there, in case of total loss of the ship, be any doubt as to this date, the disaster and the master's death are supposed to have occurred at the expiration of half of the time generally requisite for a similar ship to make, during the same season, a voyage from the place where the ship was last heard of to the port of destination.

68. Should, instead of or besides his wages, a percentage on the ship's freight (primage) or part in any other profit of the voyage, have been granted to the master as compensation for his service, he has the right, in case he leaves the service before the completion of the voyage, to receive out of the profit of the voyage so much as in proportion to the duration of the voyage may be considered to correspond with the time served. Should he according to § 65 be entitled to wages for a longer period, this shall, after he has left the service, be paid out in proportion of double the wages of the first mate, but with the appointed pay in his capacity of master, if this be greater.

69. When the ship is cleared out for a voyage and is otherwise ready for sea, the master cannot be detained for debt, nor can anything of what he has brought on board for the requirements of the ship be seized or sequestered.

## Norwegian Text.

in consequence of damage sustained, or is taken by pirates, the expenses incurred in sending home the master shall be defrayed by the State. The same rule shall apply if the ship is captured and condemned as a prize, provided the master was ignorant of the outbreak of war when he last put to sea and such was then unknown at the place of departure.

67. If the master dies, his wages shall be paid up to the day of his death. If through shipwreck doubts should arise as to the date of death, the wreck and the death of the master shall be considered to have taken place on the expiry of the time which would commonly be occupied at that season of the year by a ship like the one lost, in completing a voyage from the spot whence the last news has been received of the ship, to its destination.

68. If it has been agreed that in place of or in addition to wages, the master shall receive in recompense for his services, a percentage on the freight (Primage) or a share of other proceeds of the voyage, he shall receive thereof, when his services are terminated before the conclusion of the voyage, such part as, in proportion to the entire length of the voyage, may be regarded as due for the period he was in service. Should he, in virtue of § 65, have a claim for wages for a longer period, it shall be calculated from the time his services ceased, at double the wages of a mate, but at the rate of his fixed salary as master should this be higher. When no freight is payable the claim for percentage accorded to the master thereon becomes void.

69. When the ship has cleared outwards for a voyage and is ready to sail, the master may not be detained for debt, nor may any arrest of, or execution on any of his effects on board which are required for his service in the vessel, be made.

## Swedish Text.

the ship has been lost abroad, or taken by pirates, or been declared a constructive total loss subsequent to having sustained damage, or should the ship have been declared a good prize after having been captured, provided the outbreak of the war was not known in the port when the vessel last left it, nor otherwise known to the master.

67. Should the master die when in service, his wages shall be paid up to the date of his death. If the ship is lost with crew and everything and the time of the disaster cannot be ascertained, the disaster shall be considered to have taken place when half the time requisite for a similar ship during the same season to make the voyage from the place where the ship was last heard of to her port of destination, has elapsed.

68. If the master has made terms to receive as compensation for his services a certain proportion of the freight or any other profit accruing from the vessel's voyage, he has the right, in case he leaves the service before the completion of the voyage, to receive out of the profit of the voyage so much in proportion of the full extent of the voyage as corresponds with his time served. If he is entitled according to Art. 65, to receive the pay for a longer period, the compensation for the time subsequent to leaving the service shall be paid in the proportion of twice the wages of the chief mate. Should however certain wages have been guaranteed in the agreement of service, in addition to the aforesaid compensation, the payment for the said term shall not be fixed at a lower figure than if calculated at the rate of the said wages.

In case of dispute respecting the calculation of the compensation payable to the master as aforesaid, the amount shall be settled by arbitration.

69. Subsequent to the clearance of the ship, the vessel being otherwise ready for sea, the master cannot be stopped from proceeding for any debt, nor can anything of what he has brought on board for the requirements of the ship be seized or sequestered.

## Fjerde Kapitel.

## Om Skibsmandskabet.

70. Naar en Somand forhyres, blive de Sofartsboger, hvoraf han er i Besiddelse, at overlevere til Skipperen, som tager dem i Forvaring, saa længe Rejsen varer.

71. Enhver af Skibsmandskabet skal der ved Forhyring af Skipperen overleveres en Afregningsbog, hvori findes trykt en Formular til Overenskomst mellem Skipper og Mandskab. Bestemmelserne vedrørende Skibsmandskabet i nærværende Lov og i Instruksen for de danske Konsuler saavel som i det i § 45 omhandlede Reglement angaaende Skibsmandskabets Opholdsrum og Bespising om Bord.

Regeringen drager Omsorg for, at saadanne Afregningsbøger kunne faas for en bestemt Betaling hos enhver Monstringsbestyrer.

I Afregningsbogen skal Skipperen under sit Navn foruden den forhyredes fulde Navn, Alder og Fødested indføre en tydelig og nøjagtig Angivelse af den Rejse, hvortil han er antagen, hans Stilling om Bord, og de Vilkaar, hvorpaa han er antagen, derunder Størrelsen af den ham tilstaaede Hyre. Betinges Hyren med et vist Beløb for den bestemte Rejse, bliver i Bogen at anmærke, hvor lang Tid Rejsen forudsættes at medtage; herefter sker i saa Fald Beregningen i ethvert Tilfælde, naar efter Bestemmelser i dette Kapitel Hyre skal beregnes efter Tid.

I Afregningsbogen antegnes, hvad der ved Forhyringen er givet i Forskud, saavel som hvad der senere under Rejsen udbetales paa Hyren. Somanden er paa Forlangende pligtig i Bogen at meddele sin Tilstaaelse for de modtagne Beløb.

## Fjerde Kapitel.

## Om Skibsmandskabet.

70. Ved Forhyring af Mandskab til saadan Fart, for hvilken Patent eller Sjøfartsbog udkræves, skal Patentet eller Sjøfartsbogen overleveres til Skibsføreren. Derhos skal der oprettes en af begge Parter underskrevet Hyrekontrakt og overleveres den Forhyrede en Afregningsbog (Kontrabog).

71. Ved Oprettelse af Hyrekontrakt bliver at benytte en af det Offentlige udfærdiget Formular. Hyrekontrakten skal indeholde Angivelse af den Forhyredes fulde Navn, Alder og Fødested, den Reise, den Fart eller den Tid, for hvilken Forhyringen gjælder, den Egenkab eller Stilling, hvori den Forhyrede er antaget, den Hyre der er betinget, samt de særlige Vilkaar, der maatte være vedtagne. Er Hyren betinget for Rejsen, skal det ogsaa angives, hvor lang Tid denne forudsættes at medtage; efter denne Angivelse sker i saa Fald Beregningen altid, naar Hyre efter Bestemmelser i dette Kapitel skal beregnes efter Tid.

Afregningsbogen skal indeholde en bekræftet Gjenpart af Hyrekontrakten og et af det Offentlige foranstaltet Uddrag af de Bestemmelser i Loven, der angaar Mandskabets Pligter og Rettigheder, samt af de Reglementer, der har særlig Interesse for Mandskabet. I Afregningsbogen bliver at indføre det Forsknd, som maatte være givet Sjømanden, saavel som hvad der senere efterhaanden udbetales ham paa Hyren. Derfor kan Skibsføreren derhos forlange Kvittering paa Hyrekontrakten, som forbliver i hans Besiddelse.

## Fjerde kapitlet.

## Om besætningen.

70. När sjöman förhyres, bör, om han är inskrifven vid sjömanshus, den vid inskrifningen honom tilldelade sjöfartsbok överlemnas till befälhafvaren, hvilken eger förvara densamma till dess sjömannen lemnar tjensten.

71. Enhvar af besætningen skall, sedan han blifvit förhyrd, af befälhafvaren förses med motbok, deri införas uppgift å den resa eller den tid, för hvilken sjömannen blifvit förhyrd, hans blifvande befattning ombord samt den hyra, som betingats; är hyran bestämd till visst belopp för resa, skall i motboken anmärkas, huru lång tid antages åtgå till resan, och skall denna anteckning lända till efterrättelse vid beräkning af hyra i de fall, då sådan, jemlikt de här nedan gifna bestämmelser, bör beräknas för viss tid.

I motboken skola antecknas förskott, som vid förhyrningen lemnas sjömannen, och de afbetalningar å hyran, hvilka under resan ega rum.

ad § 70 D. Jfr. Lov Nr. 67 af 12 April 1892 om Betingelserne for at kunne virke som Forhyringsagent.

N. Patent eller Sjøfartsbog udkræves efter Lov om Værnepligt og Udskrivning af 12 Mai 1866 § 50, naar en norsk Somand ved norsk Monstringskontor paamonstres for udenrigs Fart.

S. Ang. Sjøfartsbog se Sjömanshusreglementet af 4 Mars 1870 § 11, b samt §§ 17 og 19.

Danish Text.

Norwegian Text.

Swedish Text.

## Chapter IV.

## Of the ship's crew.

70. When a seaman is engaged, the sailing-books which he possesses shall be delivered to the master, who shall take charge of them as long as the voyage lasts.

71. Each member of the crew shall, on engagement, receive an account book from the master, in which shall be printed a form of agreement between the master and the crew, the regulations contained in the present law and in the instructions to the Danish Consuls concerning the crew, as well as the regulations mentioned in § 45 with reference to the crew's quarters and fare on board.

The Government shall see that such account books can be obtained from the registrar general of seamen (Monstrings-bestyrt) for a fixed sum.

In the account book the master shall under his own name, besides the full name, age and birthplace of the man engaged, enter a plain and precise statement of the voyage for which he is engaged, his position on board and the terms on which he is engaged, with the amount of wages agreed upon. If the wages are contracted for a certain amount for a definite voyage, it shall be noted in the book, how long time the voyage is supposed to last; after this the calculation is to be made in every case when, according to the dispositions of this chapter, wages shall be reckoned according to time.

In the account book shall be noted how much money is paid in advance on his engagement as well as what is later paid out during the voyage. The seaman is, when required, obliged to give an acknowledgment in the book for wages received.

## Chapter IV.

## The Crew.

70. When a seaman is engaged for any voyage for which a patent, or seaman's book, is required, such patent, or seaman's book, shall be delivered to the master. Besides this, an agreement shall be drawn up, and subscribed by both parties, and an account book delivered to the seaman.

71. The agreement shall be in a form prescribed by the Government, in which shall be entered the full name of the seaman engaged; his age and place of birth; the voyage or voyages, or time of service, stipulated; the capacity in which the seaman is to serve; the amount of his wages, and any special conditions agreed to by the parties. If the wages are fixed for the voyage, the supposed duration thereof must also be stated, and this statement shall serve as the basis in the calculation of wages when, according to provisions contained in this chapter, they are to be computed by time.

The account book shall contain a certified copy of the agreement, and an extract, prepared by the direction of the Public Authorities, of the rules of this Law concerning the rights and duties of the crew, and other regulations of particular interest to the seamen. Any advance, or other amount of wages paid from time to time to the seaman shall be entered in the account book. On making such payments the master can demand the receipt of the seaman to be endorsed on the agreement, which shall remain in the possession of the master.

## Chapter IV.

## The crew.

70. When a seaman, registered in any of the Mercantile Marine Offices, is engaged, the shipping book granted to him by the Mercantile Marine Office, when registered, ought to be delivered to the master, who shall keep the same until the seaman leaves the service.

71. Each member of the crew on being engaged shall be provided with an account book delivered to him by the master, in which an entry shall be made of the voyage or the term for which the seaman has been engaged, and of his position on board, as also of the wages agreed upon; if the wages are fixed at a certain amount for the voyage a remark shall be made in the account book stating the length of time calculated for the voyage. In all cases when the wages, according to the stipulations hereinafter referred to, should be reckoned for a certain term, such entry as aforesaid shall be observed when calculating the amount of wages.

Any advance given to the seaman on his engagement and any cash on account of his wages paid during the voyage shall be duly entered in the account book.

To § 70 D. Cf. the Law No. 67 of 12th April 1892 concerning the conditions requisite for a person who wishes to become an agent in the business of engaging seamen.

N. A patent or seaman's book is required according to law concerning the military service and conscription of 12th May 1866 § 50 when a Norwegian seaman is engaged for a voyage in foreign waters at a Norwegian shipping office.

S. Concerning shipping books see the regulations of the "Mercantile Marine Offices" of 4th March 1870 § 11, b and §§ 17 and 19.

72. De i § 71 nævnte Oplysninger om Forhyringen har Skipperen tillige at indføre i Skibsbemandingslisten, der bliver at forsyne med Mandskabets Underskrift, hvorhos de med dette indgaaede Overenskomster, saaledes som de ere tilførte Afregningsbøgerne og Skibsbemandingslisten, skulde godkendes for Monstringsbestyreren, forinden Udmonstringen

72. De samme Angivelser, som ifølge § 71 skal findes i Hyrekontrakten, skal ogsaa indføres i Bemandingslisten.

72. Angående sjöfolks på- och afmönstring samt hvad dervid skall iakttagas gälla hvad af Konungen förordnas.

Med Hensyn til Sjöfolks Paa- og Afmönstring kommer iøvrigt de særlig derom gjældende Bestemmelser til Anvendelse.

finder Sted, saafremt Rejsen gaar længere end til Østersøen eller Nordøen. Vil Skipperen desforuden have oprettet særskilt skriftlig Overenskomst med sit Mandskaa om Forhyringen, kan han dertil forlange Bistand af Monstringsbestyreren, der ligeledes, alt imod den derfor af Regeringen fastsatte Betaling, er pligtig paa Skipperens Vegne at udfylde Afregningsbøgerne og Skibsbemandingslisten.

Findes der nogen Overensstemmelse mellem denne og Afregningsbøgerne eller den særskilte Overenskomst, som ikke er rettet inden Udmonstringen, gælder den for Sømanden gunstigste Bestemmelse, for sa vidt Vilkaarene ikke paa anden Maade lade sig bevise.

I Henseende til Søfolks Paa- og Afmönstring gælder, hvad derom særskilt er foreskrevet.

73. Har en Sømand forhyret sig til flere, gaar ældre Kontrakt foran yngre; dog har den Skipper Fortrinet, som har faaet Mandens Søfartsbog overleveret, saafremt han ikke havde Kundskab om den ældre Kontrakt.

73. Har en Sjømand forhyret sig til flere, gaar ældre Kontrakt foran yngre; dog har den Skibsfører Fortrinet, som har faaet Mandens Patent eller Søfartsbog overleveret, saafremt han ikke havde Kundskab om den ældre Kontrakt.

73. Har sjöman förhyrt sig till flere och tvista de, som honom förhyrde, om bättre rätt, ege den företräde, som först hyrde; dock att, der den, som senare förhyrde, utan kunskap om det äldre aftalet fått sjöfartsboken till sig öfverlemnad, han skall ega bättre rätt än den andre.

74. Den forhyrede er pligtig at indfinde sig til Tjeneste om Bord til den af Skipperen bestemte Tid og maa derefter ikke uden Tilladelse gaa fra Borde. I Mangel af anden Aftale løber Hyren fra den Dag, han kom om Bord.

74. Den Forhyrede er pligtig at indfinde sig til Tjeneste ombord til den af Skibsføreren bestemte Tid og maa siden ikke uden Tilladelse gaa fra bordet. I Mangel af anden Aftale løber Hyren fra den Dag, han kom ombord.

74. Förhyrd sjöman skall inställa sig till tjenstgöring ombord inom två dygn efter påmönstringen, der ej annan tid för inställelsen blifvit af befälhafvaren bestämd, och må sjömannen derefter icke utan befälhafvarens tillstånd gå från skeppsbord.

Der ej annorlunda aftalats, löper hyran från och med den dag, sjömannen kom ombord.

75. Undlader en forhyret, som er bleven paamönstret, eller som skriftlig har forpligtet sig eller bevislig modtaget Tilsigelse til at møde til en bestemt Tid, at indfinde sig om Bord til rette Tid, kan han paa Skipperens Forlangende ved Politiets Bistand tvinges til at opfylde sin Forpligtelse; det

75. Dersom en Forhyret, som er bleven paamönstret, eller som skriftlig har forpligtet sig eller bevislig modtaget Tilsigelse til at møde paa en bestemt Tid, undlader at indfinde sig ombord til rette Tid, kan han paa Skibsførerens eller andre rette Vedkommendes Forlangende ved Politiets Bistand

75. Underlåter sjöman, som blifvit påmönstrad eller som skriftligen förbundit sig till inställelse å viss dag eller bevisligen erhållit del af skriftlig kallelse att å viss dag iakttaga inställelse, att i rätt tid infinna sig ombord, eller går sjöman derifrån utan befälhafvarens tillstånd, eller kommer sjöman,

ad § 72 D. Jfr. den danske Lov om Sømands Mönstring af 26 Febr. 1872 og Lov Nr. 67 af 12 April 1892, §§ 7 og 8.

N. Jfr. den norske Lov om Skibsmandskabers Mönstring af 29 Juni 1888 med Tillægslov af 28 Mai 1892. Se ogsaa Konsulatinstruxen af 24 Juli 1906 § 76.

S. Jfr. den svenske kgl. Förordning om Paa- og Afmönstring af 4 Juni 1868.



## Danish Text.

72. The master shall, moreover, enter the aforementioned details in reference to hiring, contained in § 71, in the ship's crew-list, which is to be signed by the crew; moreover, the agreements entered on with the crew shall, in the form in which they are entered in the account books and the ship's crew-lists, be sanctioned by the registrar general of seamen before the the Baltic or the North Sea. Moreover, if the master wishes a special written agreement in reference to the hiring of the crew, he may demand the assistance of the registrar general, who is also bound, for the fee fixed by the Government, to fill out the account books and the crew list.

If any discrepancy is discovered between the latter and the account books, or the special agreement, which is not corrected before the signing of the articles, the seaman has the benefit of the doubt, if no proof of the conditions agreed upon may otherwise be procured.

Regarding the engagement and discharge of seamen the special instructions respecting this matter are applicable.

73. Should a seaman have engaged himself to several masters, the older contract shall have the preference; nevertheless, the master to whom the sailor's shipping book has been delivered, shall have the preference, provided he has had no knowledge of the previous contract.

74. The seaman engaged is bound to present himself for service on board at the time fixed by the master, and must not afterwards leave the ship without permission. When not otherwise agreed, the wages shall be reckoned from the day he came on board.

75. If a seaman who has been engaged or by writing has bound himself, or of whom it may be proved that he has got a summons to meet at a stated time, fails to present himself on board in due time, he can on the master's orders, with the assistance of the police, be compelled to fulfil his

## Norwegian Text.

72. The statements which, according to § 71, are to be contained in the agreement, shall also be entered in the crew list.

As regards the engagement and discharge of seamen before the Authorities, the special regulations in force relating thereto shall be complied with.

articles are signed, provided the voyage is further than to the Baltic or the North Sea. Moreover, if the master wishes a special written agreement in reference to the hiring of the crew, he may demand the assistance of the registrar general, to fill out the account

books, or the special agreement, which is not corrected before the signing of the articles, the seaman has the benefit of the doubt, if no proof of the conditions agreed upon may otherwise be procured.

Regarding the engagement and discharge of seamen the special instructions respecting this matter are applicable.

73. In the event of a seaman having undertaken to serve in several ships simultaneously, the older agreements shall have the priority, but that master to whom the seaman's patent or account book has been delivered, shall be first entitled to the services of the seaman, provided that he (the master), at the time of engaging the seaman, was not aware of the existence of a previous agreement.

74. On engagement the seaman shall enter upon ship-service on board at the time fixed by the master and must not leave the ship subsequently without permission. In default of any other agreement the payment of wages shall run from the day the seaman came on board.

75. If a seaman, who has been engaged before the enrolling Officer or the Consul, or who has undertaken in writing, or is proved to have been ordered, to be present at a certain time, omits to be on board in proper time, it shall be lawful for the master or some other authorized person

## Swedish Text.

72. With regard to the engagement and discharge of seamen and the formalities to be observed in connection therewith, His Majesty's Ordinances shall be in force.

the voyage is further than to the Baltic or the North Sea. Moreover, if the master wishes a special written agreement in reference to the hiring of the crew, he may demand the assistance of the registrar general, to fill out the account

books, or the special agreement, which is not corrected before the signing of the articles, the seaman has the benefit of the doubt, if no proof of the conditions agreed upon may otherwise be procured.

Regarding the engagement and discharge of seamen the special instructions respecting this matter are applicable.

73. If a seaman has engaged himself to several, and those later dispute who has the first claim, the one who first engaged the seaman shall have priority. In case the shipping book has been delivered to the last person engaging and such person had no knowledge of the former agreement, he shall have the better right.

74. Every seaman engaged shall appear on board to commence working within forty-eight hours from his engagement, unless another time to be on board has been fixed by the master. The seaman, after coming on board, may not leave the ship without the consent of the master.

When not otherwise agreed, the wages shall be reckoned from the day the seaman came on board and inclusive of it.

75. If a seaman, who has been engaged or has bound himself in writing to appear at a certain date, or who can be proved to have been served with a written notice to appear at a certain date, neglects to appear on board in due time or leaves the ship without the consent of the master, or

To § 72 D. Cf. the Danish Law concerning the engagement of seamen of 26th Feb. 1872 and the Law No. 67 of 12th April 1892, §§ 7 and 8.

N. Cf. the Norwegian Law of 29th June 1888 concerning the engagement of ships' crews with Supplement of 28th May 1892. See also the Consular Instruction of 24th July 1906 § 76.

S. Cf. the Swedish Ordinance, concerning the engagement and discharge of seamen, of 4th June, 1868.

samme gælder, naar nogen af Skibsmandskabet uden Tilladelse gaar fra Bord eller efter erholdt Landlov ikke kommer om Bord i rette Tid.

tvinges til at opfylde sin Forpligtelse; det samme gjælder, naar nogen af Skibsmandskabet uden Tilladelse gaar fraborde eller efter erholdt Landlov ikke kommer ombord i rette Tid.

som efter erhållet tilstand gått i land, icke tillbaka i rätt tid; ege befälhafvaren rätt att till hans inställande i tjensten anlita vederbörande polismyndighet.

Omkostninger, som den skyldiges Ombordbringelse medfører, kunne indeholdes i hans Hyre.

Omkostninger, som den Skyldiges Ombordbringelse medfører, kan fradrages i hans Hyre.

De kostnader, som uppstå för sjömannens inställande i tjenst, må afdragas å hans hyra.

76. Hvad der i § 69 er bestemt om Fritagelse for Arrest og Udlæg for Skipperens Vedkommende, gælder ligeledes til Fordel for Skibsmandskabet.

76. Hvad der i § 69 er bestemt om Fritagelse for Arrest og Udlæg for Skibsførerens Vedkommende, gjælder ligeledes til Fordel for Skibsmandskabet. Ei heller kan der gjøres Arrest eller Udlæg i Mandskabets tilgodehavende Hyre undtagen i de Tilfælde som omhandles i Lov af 29de Marts 1890 § 4 Lit. b, c og d, og under Forbehold af Skibsførerens Tilbageholds- og Fradragsret efter nærværende Lovs § 99 samt §§ 102—106. Dette Forbehold gjælder ogsaa med Hensyn til Hyrens Afholdelse til Dækelse af Underholdningsbidrag i Henhold til Lovene om Underholdningsbidrag af 6te Juli 1892, henholdsvis § 8 og § 1.

76. Hvad i 69 § är med afseende å befälhafvare stadgadt gälle ock för besättningen.

77. Enhver af Mandskabet skal opføre sig sommelig, ædruelig og fredsommelig, samt nøje følge enhver Forskrift, som gives for god Skik og Orden om Bord. Han skal vise sine foresatte Respekt, med Opmærksomhed modtage deres Befalinger og ved tydelige og passende Svar give til Kende, at de ere forstaaede.

77. Enhver af Mandskabet skal opføre sig sommeligt, ædrueligt og fredsommeligt samt nøie følge enhver Forskrift, som gives for god Skik og Orden ombord. Han skal vise sine Foresatte Respekt, med Opmærksomhed modtage deres Befalinger og ved tydelige og passende Svar give tilkjende, at de er forstaaede.

77. Enhvar af besättningen skall uppföra sig skickligt, nyktert och fridsamt, noggrant iakttaga allt, som för bevarande af ordning och skick ombord föreskrifves, med aktning bemöta förmän och med uppmärksamhet mottaga deras befallningar samt genom tydliga och lämpliga svar utmärka, att dessa uppfattats.

78. Det paaligger enhver af Mandskabet baade i Havn og til Søs, om Bord og i Land, at adlydesineforesattes Befalinger i Tjenesten ligesom i det hele at vise Omsorg for Skib og Gods og at udføre sin Tjeneste med Iver og Agtpaagivenhed. Den Skade, som forvoldes ved hans Fejl, Ligegyldighed eller Forsømmelse maatte forvoldes, er han pligtig at erstatte.

78. Det paaligger enhver af Mandskabet baade i Havn og til sjøs, ombord og iland at adlyde sine Foresattes Befalinger i Tjenesten ligesom i det Hele at vise Omsorg for Skib og Gods og udføre sin Tjeneste med Iver og Agtpaagivenhed. Den Skade, som forvoldes ved hans Svig, Forsømmelse eller Uagtsomhed, er han pligtig til at erstatte.

78. Enhvar af besättningen älligge att i hamn och till sjös, ombord och i land, noggrant åtlyda förmäns befallningar angående tjensten, sorgfälligt värda fartyg och gods samt i öfrigt med omsorg och nit fullgöra tjensten, vare sig natt eller dag, helg- eller söckendag. All skada och förlost, som genom sjömans fel eller försummelse i tjensten uppkommer, vare han pligtig att ersätta.

Kommer Skibet i Havsnød, er Mandskabet pligtigt at gøre alt, hvad der staar i dets Magt, for at redde Skibet og maa ikke uden Skipperens Tilladelse forlade dette for ham.

Kommer Skibet i Havnød, bør Mandskabet gjøre Alt, hvad der staar i dets Magt for at redde Skibet, og maa ikke uden Skibsførerens Tilladelse forlade dette for ham.

Råkar fartyget i sjönöd, skall besättningen göra allt, hvad i dess magt står, för att rädda fartyget och må ej utan befälhafvarens tillstånd före honom öfvergifva detsamma.

ad § 76 N. Loven af 29 Marts 1890 (med Tilleggslov af 27 Juli 1896) § 4 Lit. b, c og d indeholder Bestemmelser om Adgang til at tage Udlæg for Skatter, Opfostrings- og Skadeserstatningsforpligtelser. Efter Bestemmelserne i Love af 6 Juli 1892 § 8 resp. § 1 (Tilleggslov af 29 Marts 1902) kan Opfostringsbidrag for ægte saavel som for ægte Børn tilbageholdes i Faderens Løn, naar han unddrager sig for sin Pligt i denne Henseende.

## Danish Text.

engagement; the same applies if any of the crew leaves the ship without permission, or after having obtained leave does not return on board in due time.

Any expense incurred in getting him on board again may be defrayed out of his wages.

76. The regulations laid down in § 69 in reference to the exemption from arrest and execution for the master, are also applicable for the benefit of the crew.

77. Everyone of the crew shall behave himself decently, soberly and peacefully, and carefully observe the directions for the maintenance of order and discipline on board. He shall show respect towards his superior officers, receive their orders attentively, and by proper and distinct answers show that they are understood.

78. Everyone of the crew shall, whether in port or at sea, on board or ashore, obey the orders of his superior officers in the service, and upon the whole carefully look after ship and cargo, and zealously and attentively perform his duties by night and by day, on holidays as well as on working-days. Any damage caused through faults, carelessness or negligence on his part, he is bound to indemnify.

Should the ship be in distress, the crew shall do all in their power to save the ship, and must not, without the captain's permission, leave it before he does.

## Norwegian Text.

to demand the assistance of the police in order to compel him to perform his duty. The same rule shall apply if any member of the crew quits the ship without leave, or, after obtaining leave, does not return in proper time.

Expenses incurred in connection with the conveyance of the seaman on board the ship may be deducted from his wages.

76. The rules of § 69, exempting the master from arrest or attachment, shall also apply in respect to the members of the crew. No wages due or accruing to any member of the crew shall be subject to arrest or attachment, except in the cases mentioned in the Law of March 29, 1890, § 4, sections b, c and d, and under the reservation to the master of his right of retention or deduction of wages in the case referred to in § 99, and §§ 102 to 106, of the present Law. This reservation shall likewise apply to the retention of wages by virtue of the Law concerning the subsistence of illegitimate children of July 6th 1892, §§ 8 and 1.

77. Every seaman shall conduct himself properly, soberly, and peacefully, and duly comply with all regulations made for the observance of good order and discipline on board. He shall be respectful to his superiors, pay due attention to their commands and signify, by distinct and appropriate answers, that their orders have been understood.

78. It is the duty of each member of the crew, when in port or at sea, on board or ashore, to obey the commands of his superiors in everything relating to the service of the ship, to protect the ship and the goods, and to perform his duties with zeal and diligence. He shall also be bound to make good all loss or damage caused by any fraud, default or negligence on his part.

If the ship is in distress the seamen must do everything in their power to save the ship, and must not, without the permission of the master, leave it before he does.

## Swedish Text.

should he fail to return in proper time, having obtained permission to go on shore, the master shall have the right to apply for assistance to the Police Authorities in order to get the seaman on board.

Any expense incurred to get the seaman on board may be deducted from his wages.

76. The regulations laid down in Art. 69 regarding masters are also in force as regards the crew.

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in the cases mentioned in the Law of March 29, 1890, § 4, sections b, c and d, and under the reservation to the master of his right of retention or deduction of wages in the case referred to in § 99, and §§ 102 to 106, of the present Law. This reservation shall likewise apply to the retention of wages by virtue of the Law concerning children of July 6th 1892, §§ 8 and 1.

77. Every member of the crew shall conduct himself soberly, quietly and steadily, carefully observe all the rules and prescriptions for the maintenance of order and discipline on board, treat his superiors with respect and receive their orders attentively and by suitable and distinct replies indicate that the orders have been comprehended.

78. Every member of the crew shall, whether at sea or in port, strictly obey the orders of his superiors as regards the service, carefully look after ship and cargo, and in every respect with zeal and care perform the duties, be it night or day, holiday or working day. All loss or damage caused by the fault or neglect of the seaman in the service he shall be bound to make good.

Should the ship get into distress, the crew shall do everything in their power to save the ship and may not abandon her before the master, except with his consent.

To § 76 N. The Law of 29th March 1890 (with Supplementary Law of 27th July 1896) § 4 letters b, c and d, contains regulations regarding the permission to effect a seizure for taxes, obligations in regard to alimentary allowances and damages. According to the regulations of the Law of 6th July 1892 § 8 and § 1 respectively (Supplementary Law of 29th March 1902) alimentary contributions both in regard to illegitimate and legitimate children may be withheld out of the salary of the father when he shirks his obligation in this respect.

79. Det paaligger særlig Styrmanden at gaa Skipperen til Haande ved Sejladsen og de dertil hørende Observationer og Beregninger, at bistaa ved Dagbogens Forelse, samt at føre Tilsyn med det øvrige Mandskab, Provianten, Skibet og dets Tilbehør. Ved Lastning og Losning har han at gøre Optegnelser over Godset, og han er Skipperen ansvarlig for alt, hvad han modtager, saavel som for Godsets Stuvning. Fører Styrmanden Dagbogen, er han ansvarlig for dens Rigtighed.

79. Det paaligger særlig Styrmanden at gaa Skibsføreren tilhaande ved Seiladsen og de dertil hørende Observationer og Beregninger, at bistaa ved Dagbogens Forelse samt at føre Tilsyn med det øvrige Mandskab (Maskinmandskabet undtaget), Provianten, Skibet og dets Tilbehør. Ved Lastning og Losning har han at gjøre Optegnelser over Godset, og han har at paase dets forsvarlige Stuvning. Fører Styrmanden Dagbogen, er han ansvarlig for dens Rigtighed.

79. Till styrmannens befattning hör särskildt att gå befälhafvaren tillhanda vid seglatsen och dertill hörande observationer och beräkningar, att biträda vid skeppsdagbokens förande samt att utföra uppsigt öfver den öfriga besättningen och tillsyn å fartyg, skeppsredskap och proviant. Vid lastning och lossning före han anteckning öfver godset och ansvara inför befälhafvaren för allt, hvad han mottager, så ock för godsets stuvning. Förer styrmannen skeppsdagboken, vare han ansvarig för dess riktighet.

Har Skipperen Forfald, eller er han fraværende uden at have givet Forholdsregler for indtræffende Tilfælde, fatter Styrmanden Beslutning, for saa vidt Sagen ikke taaler Opsættelse. Dor Skipperen, eller bliver han ellers ude af Stand til at føre Skibet, eller forlader han Tjenesten, træder Styrmanden i hans Sted, indtil der er taget Bestemmelse paa den i § 30 ommeldte Maade.

Har Skibsføreren Forfald, eller er han fraværende uden at have givet Forholdsregler for indtræffende Tilfælde, fatter Styrmanden Beslutning, forsaavidt Sagen ikke taaler Opsættelse. Dor Skibsføreren, eller bliver han ellers ude af Stand til at føre Skibet, eller forlader han Tjenesten, træder Styrmanden i hans Sted, indtil der er taget Bestemmelse paa den i § 30 ommeldte Maade.

Vid befälhafvarens frånvaro eller förfall ege styrmannen i fall, för hvilka befälhafvaren icke meddelat föreskrift, i dennes ställe fatta beslut, så vida ärendet ej kan täla uppskof. Aflöder befälhafvaren, eller varder han eljest urståndsatt att föra fartyget, eller öfvergifver han tjensten, träde styrmannen i hans ställe till dess befälhafvare i den ordning, som i 30 § sägs, blifvit förordnad.

80. Det paaligger særlig Maskinmesteren at føre Tilsyn med Dampkedler og Maskiner; han er ansvarlig for deres Drift og Pasning, ligesom han har Opsigt med det derved ansatte Mandskab. Han fører Maskindagbogen under Skipperens Tilsyn og er ansvarlig for dens Rigtighed.

80. Det paaligger særlig Maskinmesteren at føre Tilsyn med Dampkjedler og Maskiner; han er ansvarlig for deres Drift og Pasning, ligesom han har Opsigt med det derved ansatte Mandskab. Han fører Maskindagbogen under Skibsførerens Tilsyn og er ansvarlig for dens Rigtighed.

80. Maskinisten åligger särskildt att hafva tillsyn å fartygets ångpannor och maskiner samt ansvara för deras behöriga drift och skötsel äfvensom att utföra uppsigt öfver det för sådant ändamål anställda maskinbesättningen. Han före maskindagboken under befälhafvarens tillsyn och vare ansvarig för dess riktighet.

Han staar ikke i nnderordnet Forhold til Styrmanden, undtagen i de i § 79, sidste Stykke, omhandlede Tilfælde, samt forsaavidt som han har at lade Maskinen arbeide efter Styrmandens Ordre, naar denne er vagthavende.

81. Ingen af Skibsmandskabet maa uden Skipperens Til-

81. Ingen af Skibsmandskabet maa uden Skibsførerens

81. Ej må någon af besättningen utan befälhafvarens till-

ad 79 D. Betingelserne for nt fare som Styrmand indeholdes ogsaa i den i Note ad § 24 anførte Lov af 25 Marts 1892, jfr. tillige Lov (Nr. 47) af 30 Marts 1892 om Styrmandsexamen m. v.

N. S. De i Note ad § 24 anførte Love og Bestemmelser er ogsaa afgjørende med Hensyn til Adgangen til at fare som Styrmand.

ad § 80 D. Jfr. om Maskinmestre og Maskinister den ad §§ 24 og 79 anførte Lov af 25 Marts 1892 samt Lov (Nr. 48) af 30 Marts 1892 om Examinier for Maskinister.

N. Jfr. Lov af 26 Juni 1889 om Maskinister paa Dampfartøier af Handelsmarinen med en Tillægslov af 13 Juni 1894.

S. Jfr. de i Noten ad § 24 anførte Forordninger, som ogsaa omfatter Maskinister.

## Danish Text.

79. It is especially the duty of the mate to assist the master with the navigation of the ship and all the observations and reckonings in connection therewith, to help to keep the logbook together with superintending the rest of the crew, the provisions, the ship and its appurtenances. During the loading and unloading of the vessel he shall keep account of the goods, and he is answerable to the master for all what he receives, as well as for the stowing of the goods. If the mate keeps the logbook, he shall be responsible for its correctness.

If the master, in case of absence or *essoin*, has not arranged it otherwise, the mate shall decide in matters which do not admit of postponement. In case the master should die or otherwise become unable to take charge of the ship, or should he leave the service, the mate shall take his place until a decision has been come to according to the manner mentioned in § 30.

80. It is the particular duty of the engineer to look after the boilers and engines of the ship; he is responsible for their proper working and attendance, and has also the superintendence of the portion of the crew which is engaged for such purpose. He keeps the engineer's journal under the master's superintendence, and is responsible for its accuracy.

81. None of the crew may, without the master's permis-

## Norwegian Text.

79. It is the duty of the mate specially to assist the master in the navigation of the ship, and the calculations and observations in connection therewith, to assist in keeping the log-book, and to superintend the rest of the crew (excepting those employed in the engine-room), the provisions, the ship and everything appertaining thereto. When loading and unloading takes place, he shall make out lists of the goods, and see to the proper stowing of the cargo. If the mate keeps the log-book he shall be responsible for its correctness.

If the master is prevented from performing his duties, or is absent without having left necessary instructions for occurrences which may arise, the mate shall adopt all necessary measures, provided the occurrence does not admit of delay. If the master dies, or otherwise becomes incapable of commanding the ship, or if he quits the service of the ship, the mate shall perform his functions until the decision, referred to in § 30, has been taken.

80. It is the special duty of the engineer to take charge of the boilers and engines. He is responsible for their working and the service connected therewith, and shall superintend the members of the crew employed in the engine-room. He shall keep the log-book of the engine-room, under the supervision of the master, and is responsible for its correctness.

He is not subordinate to the mate except in the instances referred to in § 79, last section, and, when the mate is in command of the watch, in working the engines according to his directions.

81. No member of the crew may, without the permission

## Swedish Text.

79. The particular duties of the mate are as follows, viz. to assist the master in the navigation and in all the observations and calculations in connection therewith; to assist in keeping the ship's logbook and to manage and control the rest of the crew, and to look after the ship, the appurtenances and provisions. When a cargo is loaded, he shall keep account of the goods and shall be responsible to the master for everything he receives and for the stowage of the cargo. In case the mate is keeping the logbook, he shall be responsible for its correctness.

Whenever the master is absent or prevented, the mate shall decide instead of the master in all cases in which the latter has not given instructions, provided always that the decision to be taken cannot be deferred. In case the master should die or otherwise be unable to navigate the vessel, or should he quit the service, the mate shall take his place until a master has been appointed in the manner prescribed in Art. 30.

80. The particular duties of the engineer are as follows, viz. to look after the boilers and engines of the ship; to be responsible for their proper working and supervision, and to manage and control the crew engaged for such purpose. He shall keep the engineer's log-book, under supervision of the master, and be responsible for its correctness.

81. No member of the crew shall carry with him merchan-

*To § 79 D.* The conditions for the engagement of mates are also contained in the Law of 25th March 1892 indicated in the note to § 24, cf. also the Law (No. 47) of 30th March 1892 concerning the examination of mates etc.

*N. S.* The laws and regulations mentioned in the note to § 24 are also decisive with regard to the right to navigate as mates.

*To § 80 D.* Cf. concerning chief engineers and assistant engineers the Law mentioned in the notes to §§ 24 and 79 of 25th March 1892 and the Law (No. 48) of 30th March 1892 concerning the examination of engineers.

*N.* Cf. the law of 26th June 1889 concerning the engineers of mercantile steamers, with a Supplementary Law of 13th June 1894.

*S.* Cf. the Ordinances mentioned in the note to § 24; these Ordinances also include engineers.

ladelse medtage Varer for egen eller andres Regning; sker det, gælder derom, hvad i § 28 er bestemt.

Findes der Grund til Mistanke om, at Varer ulovlig ere medtagne, eller at noget er bragt om Bord, som kan udsætte Skib eller Ladning for Fare eller Risiko eller forvolde Uorden, kan Skipperen lade Mandskabets Gemmer undersøge.

Tilladelse medtage Varer for egen eller Andres Regning; sker det, gælder derom, hvad i § 28 er bestemt.

Findes der Grund til Mistanke om, at Varer ulovlig er medtagne, eller at Noget er bragt ombord, som kan udsætte Skib eller Ladning for Fare eller Risiko eller forvolde Uorden, kan Skibsforeren lade Mandskabets Gjømmer undersøge.

stånd medtaga handelsvaror för egen eller annans räkning; sker det, vare lag, som i 28 § sägs. Finner befälhafvaren anledning förekomma att handelsvaror olofligen medtagits eller att något förts ombord, som kan vålla oordning bland besättningen eller hvars förande kan utsätta fartyg eller last för äfventyr, ege befälhafvaren låta undersöka besättningens gömmor.

Hvad der ulovlig er taget om Bord, kan bringes i Land eller hvis det først opdages, efter at Skibet er gaaet til Søs, kastes over Bord, naar det ikke uden Fare eller Risiko kan beholdes om Bord.

Hvad der ulovlig er taget ombord, kan bringes iland eller, hvis det først opdages, efterat Skibet er gaaet tilsjøs, kastes overbord, naar det ikke uden Fare eller Risiko kan beholdes ombord.

Hvad olofligen medtagits ege befälhafvaren föra i land eller, om förhållandet uppdagas först sedan fartyget gått till sjös och godset icke utan äfventyr kan behållas i fartyget, kasta öfver bord.

82. Naar ikke andet er vedtaget, ere Sjøfolk, som ere forhyrede for ubestemt Tid, pligtige at følge Skibet, indtil det efter endt Reise enten er ankommet til Forhyringsstedet eller, hvis de ere forhyrede i Danmark, til hvilken som helst indenlandsk Havn. Ere de forhyrede for bestemt Tid, og denne udløber under Reisen, kunne de dog ikke forlange Afsked forend paa første Sted, som Skibet derefter anløber for Losning eller Lastning. Er Forhyringen skeet for bestemt Reise, og denne forandres for Skibets Afgang fra Forhyringsstedet, kan Sjøfolkene straks forlange Afsked; men sker Forandringen først efter Skibets Afgang, er Forhyringen bindende, indtil Skibet er ankommet til det nye Bestemmelsessted, medmindre dette er forandret fra indenlandsk til udenlandsk eller fra europæisk til ikke-europæisk Havn. I saa Fald har Mandskabet Ret til at forlange Afsked i den første Havn, som Skibet anløber efter Forandringen, men kan da kun gøre Krav paa Hyre for den Tid, det har gjort Tjeneste. Lige med europæiske Havne regnes i denne Henseende alle ikke-europæiske Havne ved Middelhavet, det sorte og det azovske Hav.

82. Naar ikke Andet er vedtaget, er Sjøfolk, som er hyrede for ubestemt Tid, pligtige til at følge Skibet, indtil det efter endt Reise enten er ankommet til Forhyringsstedet eller, hvis de er norske Sjøfolk, til hvilken som helst norsk Havn. Er de hyrede for bestemt Tid, og denne udløber under Reisen, kan de dog ikke forlange Afsked forend paa første Sted, som Skibet derefter anløber for Losning eller Lastning. Er Forhyringen skeet for bestemt Reise, og denne forandres for Skibets Afgang fra Forhyringsstedet, kan Sjøfolkene straks forlange Afsked; men sker Forandringen først efter Skibets Afgang, er Forhyringen bindende, indtil Skibet er ankommet til det nye Bestemmelsessted, medmindre dette er forandret fra indenlandsk til udenlandsk eller fra europæisk til ikke-europæisk Havn. I saa Fald har Mandskabet Ret til at forlange Afsked i den første Havn, som Skibet anløber efter Forandringen, og har da Krav paa Hyre alene for den Tid, det har gjort Tjeneste. Lige med europæiske regnes i den ovenfor omhandlede Henseende alle ikke-europæiske Havne ved Middelhavet, det sorte Hav og det azovske Hav.

82. Förhyrd sjöman skall, der ej hyresaftalet annorlunda bestämmer, kvarstanna i tjänst till dess fartyget ankommit till förhyrningssorten eller, om han förhyrts i Sverige, till annan svensk hamn, der resan slutar. Är han förhyrd för viss tid, skall han, i händelse denna utlöper under resa, åtfölja fartyget till närmaste lossnings- eller lastningsort. Är han förhyrd för viss resa och ändras denna innan fartyget afgått från förhyrningssorten, ege han der erhålla entledigande; sker förändringen under resan, skall han åtfölja fartyget till resans slut, såvida icke, till följd af förändringen, fartyget kommer att gå till utländsk hamn i stället för inländsk eller till hamn utom Europa i stället för europeisk hamn, i hvilka fall sjömannen eger rätt att erhålla entledigande i första hamn, som efter förändringen anlöpes; skolande i berörda hänseende de vid Medelhafvet, Svarta hafvet och Azovska sjön utom Europa belägna hamnar räknas lika med europeiska.

Sjöman, som på grund af resans förändring afgår ur tjänst,

## Danish Text.

sion, take with him merchandise on his own or other person's account; in case of offence the prescription laid down in § 28 shall be applicable.

Should there be any reason for suspicion that merchandise has been illegally carried by the ship, or that anything has been brought on board which might expose the ship or cargo to danger, or be the occasion of disorder, the master can cause the places where the crew keep their things, to be searched.

All that is unlawfully taken on board can be brought ashore, or, if it is first discovered after the ship has put to sea, it may be thrown overboard, when it cannot be retained on board without danger or risk.

82. Unless otherwise agreed upon, seamen who are not engaged for a stated time, are bound to remain with the ship until it, on the termination of the voyage, reaches the original hiring place, or, if they are engaged in Denmark, any Danish port. Should they be engaged for a certain time, and this time expires during the voyage, they may not demand to leave the service before the ship's arrival at the first loading or discharging port. Should the engagement be for a certain voyage, and this voyage be altered before the ship's departure from the port of engagement, the seamen can immediately demand to be discharged; but should the alteration first be made after the ship's departure, the engagement is binding until the ship's arrival at the new port of destination, unless the latter is changed from a home port to a foreign port, or from a European to a non-European port. In that case the crew have the right to demand their discharge in the first port at which the ship calls subsequent to the alteration, but they can then only lay claim to wages for the time actually served. In this respect all Non-European ports in the Mediterranean, the Black Sea and the Sea of Azov are

## Norwegian Text.

of the master, carry goods on board for his own or others' account. In cases of contravention of this regulation the rules of § 28 shall apply.

If there is reason to believe that goods have been shipped unlawfully, or that anything is brought on board which can expose the ship or the cargo to any risk or danger, or create disturbance on board, it shall be lawful for the master to inspect the depositories of the seamen.

Everything that has been brought on board unlawfully may be put on shore, or, if not discovered before the ship has put to sea, be thrown overboard, if it cannot without risk or danger be retained on board.

82. If not otherwise stipulated, any seaman who has been engaged for an indefinite period shall remain with the ship until, after the termination of the voyage, it either arrives at the port where the seaman was engaged, or, if a Norwegian seaman, at any port in Norway. When engaged for a fixed time the seaman, if the term of engagement expires during the voyage, is only entitled to leave the ship at the first place where it calls to load or discharge. When, in the case of an engagement for a fixed voyage, the voyage is altered before the departure from the port where the seamen have been engaged, they may claim to be discharged at once; but if such alteration is decided upon after the departure of the ship, the engagement shall be binding on the seaman until the arrival of the ship at the new place of destination, provided the voyage has not been altered, either from a Norwegian port to a foreign port, or from a port in Europe to a port beyond Europe. In such cases the seamen shall be entitled to their discharge at the first port where the ship arrives after the altering of her destination, and shall then have a claim for wages only for the time they have served. For

## Swedish Text.

disc, either for his own or for any other person's account, without the permission of the master. In case of offence the Law laid down in Art. 28 shall be applicable. Should there be reason for the master to believe that merchandise has been carried by the ship without permission, or that anything has been brought on board which may cause disorder amongst the crew, or the carrying of which may expose the ship or cargo to danger, he shall have the right to cause the places where the crew keep their things to be thoroughly searched.

The master shall have the right, either to put on shore everything thus brought on board without leave, or have it thrown overboard, should the matter not be discovered before the ship has proceeded to sea and the goods cannot be kept on board without danger.

82. When engaged, the seaman shall remain in service until the ship arrives at the port of engagement, or, if engaged in Sweden, at any other Swedish port where the voyage terminates, unless otherwise stipulated in the agreement. If engaged for a certain term and such term expires during the voyage, he shall accompany the ship to the nearest loading or discharging port. If engaged for a certain voyage, and such voyage is altered before the ship sails from the port of engagement, the seaman shall have the right there to obtain his discharge; should the alteration be made during the voyage, he shall remain with the ship until the voyage is terminated, provided the ship, owing to the alteration, has not to proceed to a foreign instead of a home port, or to a port out of Europe instead of a European port, in which cases the seaman shall have the right to obtain his discharge in the first port at which the ship calls subsequent to the alteration. In such respects the same rule as for European ports also applies to ports in the Mediterranean, the Black sea and Sea of Azov, situated out of Europe.

Any seaman leaving the service on account of alteration

erhålle hyra för den tid, han tjenstgjort.

Udbryder der i den Havn, hvortil Skibet er bestemt, en voldsom og almenfarlig Farsot af Kolera, gul Feber eller Pest, har Mandskabet, hvad enten det er forhyret for Tid eller bestemt Reise, Ret til straks at forlange Afsked, hvis Reisen endnu ikke er begyndt, men ellers i den første Havn, Skibet anløber, efterat Mandskabet er blevet vidende om Forholdet. I disse Tilfælde har Mandskabet Krav paa Hyre kun til Afskeden.

83. Uden Hensyn til, hvad der maatte være bestemt i Hyrekontrakten, kunne Søfolk, der efter sidste Paamonstring have været i Tjeneste paa et Skib i to Aar, forlange Afsked paa første Sted, som det anløber for Losning eller Lastning, medmindre Skibet derfra skal afgaa umiddelbart til et Sted, hvor Hyrekontrakten hjemler Afmonstring. Der tilkommer dem kun Hyre til Fratrædelsen.

83. Uden Hensyn til, hvad der maatte være bestemt i Hyrekontrakten, kan Søfolk, der efter sidste Paamonstring har været i Tjeneste paa et Skib i 2 Aar, forlange Afsked paa første Sted, som det anløber for Losning eller Lastning, medmindre Skibet derfra skal gaa umiddelbart til et Sted, hvor Hyrekontrakten hjemler Afmonstring. Der tilkommer dem kun Hyre til Afskeden.

83. Utan afseende å hvad i hyresaftalet må vara bestämdt angående tjenstetidens längd ege sjöman, när han efter sista påmonstringen å fartyget varit i tjänst två eller, på resa bortom Kap Horn eller Goda Hoppsudden, tre år, rätt att erhålla entledigande å första ort, som för lossning eller lastning der efter anlöpes; dock att, om fartyget derifrån skall afgå till ort, der sjömannen jemlikt hyresaftalet eger erhålla entledigande, sjömannen är skyldig att följa fartyget till den ort, äfven om last förut skall intagas å den ort, der han egde lemna fartyget, eller å annan, i fartygets väg belägen ort samt derefter utlossas i hamn under resan.

lemna fartyget, eller å annan, i derefter utlossas i hamn under

Hyran utgår i ty fall, som i 82 § sägs.

84. Søfolk, som ifølge Hyrekontrakten eller Bestemmelserne i §§ 82—83 ere berettigede til at fratræde Tjenesten, ere dog paa Skipperens Begæring forpligtede til at udføre den Tjeneste, som Omstændighederne kræve ved Ladningens eller Ballastens Losning, Skibets Fortøjning, Afrigning eller Oplæggelse, og de kunne ikke forlange Afsked, førend saadant Arbejde er færdigt. De ere dog ikke bundne ud over en Uge efter Ankomsten.

84. Søfolk, som ifølge Hyrekontrakten eller Bestemmelserne i §§ 82—83 har Ret til at fratræde Tjenesten, er dog paa Skibsførerens Begjæring forpligtede til at udføre den Tjeneste, som Omstændighederne kræver ved Ladningens eller Ballastens Losning, Skibets Fortøjning, Afrigning eller Oplæggelse, og de kan ikke forlange Afsked, førend saadant Arbejde er færdigt. De er dog, med Undtagelse af 1ste Styrmand, ikke bundne udover en Uge efter Ankomsten.

84. Sjöman, som på grund af bestämmelse i hyresaftalet eller jemlikt 82 eller 83 § eger rätt att erhålla entledigande, vare dock pliktig att, der befälhafvaren det äskar, lemna nödigt biträde vid lossning af last och barlast samt vid fartygets förtöjning, afriggning och uppläggning; och må förty befälhafvaren låta med afmönstring anstå till dess sådant arbete afslutats, dock icke utöfver sjunde dagen efter fartygets ankomst.

85. Godtgør en Sømand, at han kan faa Skib at føre, er han berettiget til at forlange Afsked naar han uden forøget Udgift for Rederiet stiller en anden duelig Mand i sit Sted. Det samme gælder, naar Plads som 1ste Styrmand eller Maskinmester tilbydes nogen, som er forhyret i ringere Stilling.

85. Godtgjør en Sjømand, at han kan faa Skib at føre, eller at han kan faa Plads som 1ste Styrmand eller Maskinmester, om han er forhyret i ringere Stilling, er han berettiget til at forlange Afsked, naar han uden forøget Udgift for Rederiet stiller en anden duelig Mand i sit Sted. Det

85. Sjöman, som visar, att han kan få fartyg att föra, eger rätt att erhålla entledigande, om han utan ökad utgift för redaren sätter annan duglig karl i sitt ställe. Lag samma vare, der anställning såsom første styrman eller ansvarsmaskinist erbjüdes sjöman, som är förhyrd i ringare ställning.



## Danish Text.

reckoned among European ports.

## Norwegian Text.

the intents of this paragraph all non-European ports on the Mediterranean, the Black Sea and the Sea of Azov are considered as European ports.

## Swedish Text.

of the voyage shall receive wages for the time during which he has served.

If there has broken out, in the port to which the ship is bound, a violent or malignant epidemic of cholera, yellow fever, or the plague, the crew shall, whether they have been engaged for a fixed time, or a fixed voyage, or not, be entitled to immediate discharge provided the voyage is not yet commenced, but, otherwise, in the first port at which the ship calls after the occurrence has come to the knowledge of the crew. In such case the seamen are only entitled to wages up to the date of their discharge.

83. Notwithstanding what has been fixed in the contract, seamen, who after their last engagement have served on board a ship for two years, can demand their discharge at the first place at which the ship calls for discharging or loading of cargo, unless the ship from this port goes directly to a port that admits of discharge according to the contract. Wages are only due until their retirement.

83. Notwithstanding any clause to the contrary contained in the agreement, any seaman having served on board a ship for a period of two years since the date of his last engagement, may demand his discharge at the first place the ship arrives at to load or unload, provided the ship does not depart therefrom directly to a port where, according to the agreement, the service of the seaman shall terminate. The wages are, in such a case, only payable up to the discharge of the seaman.

he shall follow the ship to such place as he may wish to be loaded in the port where the ship is to be loaded, and thereupon to the right to leave the ship or in ward road, and thereupon to during the voyage.

The wages are in such cases to be paid in the manner mentioned in Art. 82.

83. Irrespective of the stipulations in the agreement regarding the length of the service, the seaman shall have the right to obtain his discharge at the first place of calling for the purpose of loading or discharging, when he has been serving for two years subsequent to the last engagement on board, or three years if on a voyage beyond the Cape of Good Hope or Cape Horn. Should, however, the vessel be bound thence to a port where the seaman has the right, according to the agreement, to obtain his discharge, place, even if a cargo is pre- port where the seaman had any other port on the home- be discharged in any port

84. Any seaman who, according to his hiring contract or the provisions of §§ 82—83, is entitled to retire from service, is still, on the master's demand, bound to perform any duty which circumstances may require in connection with the discharging of the cargo or the ballast, the mooring of the ship, its unrigging or laying up, and he cannot demand to be discharged before such work is finished. Nevertheless, he is not bound for more than one week after arrival.

84. When, according to the agreement, or the rules of §§ 82—83, a seaman is entitled to leave the service of the ship, such seaman must, when requested by the master, perform all work necessary for the discharge of the cargo or the ballast, and the mooring, dismantling, or laying-up of the ship, and he cannot claim his discharge before such work has been performed. The crew shall, however, with the exception of the chief mate, in no case be bound to remain with the ship beyond the period of one week after the arrival of the ship.

84. Any seaman who has the right to obtain his discharge on the ground of any stipulation in the agreement or in accordance with Art. 82 or Art. 83 shall, however, be bound to render necessary assistance, if the master should so require, in the discharging of the cargo or ballast and in the mooring, unrigging or laying up of the ship, and for such purpose the master may postpone the discharging of the seaman until the aforesaid work is finished, such delay, however, shall not exceed seven days from the date of the arrival of the ship.

85. Should a seaman be able to prove that he can obtain the command of a ship, he has the right to demand his discharge, if he, without any additional expense to the ship-owners, supplies another capable man in his place. The same applies in case a position as first mate or en-

85. If a seaman proves that he can obtain the command of a ship, or a situation as a chief mate, or engineer, when serving in a lower capacity, he shall be entitled to his discharge, provided he finds an able substitute to serve in his place without causing any additional expense to the ow-

85. Any seaman proving that he can get the command of a ship, shall have the right to obtain his discharge if he procures an able substitute without incurring any extra expense to the owners. The same law shall hold good when a seaman, engaged in an inferior capacity, is offered a

Udbryder Krig, som paa Grund af Skibets Nationalitet eller Ladningens Beskaffenhed samt Rejsens Retning medfører Fare for Opbringelse, kan ligeledes Afsked forlanges.

Hyre bliver i de her omhandlede Tilfælde at betale til Fratrædelsen.

86. Godtgør en Somand, at der er øvet Mishandling mod ham om Bord, enten af Skipperen selv, eller af andre, uden at Skipperen efter Opfordring har taget ham i Beskyttelse, eller at Skipperen har forholdt ham forsvarlig Kost, kan han forlange Afsked. Den, som af saadan Grund fratræder, skal have Hyre for den Tid, han har været i Tjenesten, og dertil Hyre for en Maaned, samt naar han fratræder paa andet Sted, end Forhyringsstedet, tillige for den Tid, der udfordres for at komme til Afmonstringsstedet, eller, hvis saadant ikke er vedtaget, til Forhyringsstedet; han har derhos Krav paa i Penge at erholde, hvad Rejsen derhen med Underhold koster. Var Hyren bestemt for Rejsen, skal han dog i intet Tilfælde have mere end den fulde betingede Hyre og Rejseomkostninger.

87. Er Skibet ikke i sødygtig Stand til den Rejse, som dermed skal foretages, og Skipperen undlader at foretage de Foranstaltninger, som udfordres til at sætte det i behørig Stand, er Mandskabet berettiget til at forlange Afsked. Naar Flertallet af Mandskabet fremsætter Begjæring derom, er Skipperen forpligtet til at lade foretage lovlig Besigtigelse af Skibet til Bedømmelse af dets Sødyg-

samme gjælder, naar han godtgjør, at der overhovedet efter Forhyringen er indtruffet Omstændigheder, der bevirker, at Hyrekontraktens Opfyldelse vilde blive forbundet med betydeligt Velfærdstab for ham.

Udbryder der Krig, som paa Grund af Skibets Nationalitet eller Ladningens Beskaffenhed samt Rejsens Retning medfører Fare for Opbringelse, kan Mandskabet ligeledes forlange Afsked.

Hyre bliver i de her omhandlede Tilfælde at betale til Afskeden.

86. Godtgjør en Sjomand, at der er øvet Mishandling mod ham ombord enten af Skibsføreren selv eller af Andre, uden at Skibsføreren efter Opfordring har taget ham i Beskyttelse, eller at Skibsføreren har forholdt ham forsvarlig Kost, kan han forlange Afsked. Den, som af saadan Grund fratræder, skal have Hyre for den Tid, han har været i Tjenesten, og dertil Hyre for en Maaned samt, naar han fratræder paa andet Sted end Forhyringsstedet, tillige for den Tid, der udfordres for at komme til Afmonstringsstedet, eller, hvis saadant ikke er vedtaget, til Forhyringsstedet; han har derhos Krav paa i Penge at erholde, hvad Rejsen derhen med Underhold koster. Var Hyren bestemt for Rejsen, skal han dog i intet Tilfælde have mere end den fulde betingede Hyre og Rejseomkostninger.

87. Er Skibet ikke i sjødygtig Stand til den Reise, som dermed skal foretages, og Skibsføreren undlader at foretage de Foranstaltninger, som udfordres til at sætte det i behørig Stand, er Mandskabet berettiget til at forlange Afsked. Naar Flertallet af Mandskabet fremsætter Begjæring derom, er Skibsføreren forpligtet til at lade foretage lovlig Besigtelse af Skibet til Bedøm-

Utbryter krig, som till följd af fartygets nationalitet eller lastens beskaffenhet samt resans riktning medför fara för uppbringning, ege sjöman ock rätt att erhålla entledigande.

I de fall, nu äro nämnda, utgår hyran efter ty i 82 § sägs.

86. Visar sjöman, att befälhafvaren mot honom öfvat grof misshandel eller underlåtit att mot sådan misshandel, som af annan ombord förfövat, gifva honom påkalladt skydd, eller att befälhafvaren förhållit honom försvarlig kost; ege han rätt att erhålla entledigande.

Sjöman, som af sådan anledning frånträder tjensten, erhålle hyra för den tid, han tjenstgjort, och derutöfver för en månad, så ock, derest han lemna tjensten annanstädes än å förhyrningsorten, hyra för den tid, som beräknas åtgå för resa till afmonstringsorten, om sådan aftalats, men eljest till förhyrningsorten; dock att, der hyran var bestämd till visst belopp för resan, hyresersättningen ej må öfverstiga samma belopp. Lemna han tjensten annanstädes än å förhyrningsorten, njute han ock reseersättning i penningar, motsvarande kostnaden för resa till afmonstringsorten, om sådan aftalats, men eljest till förhyrningsorten samt för underhåll under resan.

87. Är fartyget icke i sjövärdigt skick för den resa, som dermed skall företagas, och underlåter befälhafvaren att vidtaga den åtgärd, som för dess försättande i sjövärdigt skick erfordras, ege besättningen rätt att erhålla entledigande. Till uttrönande af fartygets sjövärdighet åligger befälhafvaren att, när mer än halfva antalet af besättningen derom gör framställning, låta

## Danish Text.

ginger is offered to anyone in a lower position.

## Norwegian Text.

ners. The same rule shall apply if he can prove that such circumstances have occurred after his engagement that its fulfilment would cause him a loss of vital importance.

## Swedish Text

situation as chief mate or responsible engineer.

Discharge can also be demanded, should a war break out which from the ship's nationality, the nature of the cargo or the direction of the voyage, would entail danger of seizure.

In the above mentioned cases wages are to be paid up to the date of the retirement.

86. Any seaman being able to prove that he has been ill-treated on board either by the master himself, or by others, without having received any protection from the master in spite of his demand, or that the master has withheld from him the proper food, can demand to be discharged. The seaman who leaves the service for any such reason, shall receive wages for the time served, besides an addition of one month's pay, and if he leaves at any other place than the place of engagement, also wages for the time calculated for travelling to the port of discharge or, if no such place has been agreed upon, to the place of engagement; he can, besides, lay claim to an amount in cash corresponding to the cost of travelling to that place, together with cost of living. If the wages were fixed for the voyage, he shall, however, in no case receive more than the full stipulated pay and travelling expenses.

87. Should the ship not be in seaworthy condition for the voyage which it shall undertake, and the master neglects to take proper precautions for putting the vessel in seaworthy condition, the crew shall have a right to obtain their discharge. Should more than half the number of the crew request it, the master is bound to cause a legal survey to be made of the ship

In case of the outbreak of a war by which the ship, on account of its nationality, the nature of its cargo, or the course of its voyage would be exposed to capture, the crew shall be entitled to their discharge.

In the cases herein above referred to, the wages shall be payable up to the discharge of the seamen.

86. If any seaman can prove that he has been subject to maltreatment by the master or others, without obtaining the protection of the master when demanded, or that proper and sufficient food has not been served out to him by the master, he may demand his discharge. In such a case he shall, in addition to wages for the time of service, be entitled to wages for one month, and besides, if he leaves anywhere else than at the place where he was engaged, to wages for the time required for his voyage to the place where the engagement ought to terminate, or, if no such place is stipulated in the agreement, to the place where he has been engaged, and, moreover, he shall be entitled to an amount in cash equivalent to the travelling expenses and subsistence money required for the voyage to the said places. If the seaman is hired for the voyage, he shall in no case have more than the wages stipulated for, and travelling expenses.

87. If the ship is not in a seaworthy condition for the intended voyage, and if the master omits taking proper measures to secure the seaworthiness of the ship, the crew shall be entitled to demand their discharge. On a demand made by the majority of the crew, the master is bound to cause a lawful survey of the ship to be held in order to have the sea-

If war breaks out entailing danger to the ship of being captured on account of her nationality or the nature of the cargo and the direction of the voyage, the seaman shall also have the right to obtain his discharge.

In the above mentioned cases the wages are to be paid in the manner mentioned in Art. 82.

86. Any seaman proving that the master has ill-treated him or neglected to give him protection claimed against ill-treatment from any other person on board, or not given him sufficient or fit provisions, shall have the right to obtain his discharge.

Any seaman leaving the service for any such reason shall receive wages for the term served and one month in excess. Should the seaman be leaving the service at any other place than the place of engagement he shall also receive wages for the time calculated for travelling to the port of discharge, should any such port be stipulated in the agreement, otherwise to the port of engagement. Should, however, the wages be fixed at a certain amount for the voyage, the compensation may not exceed the said amount. If the seaman is leaving the service at any other place than the place of engagement he shall also be paid in cash an amount corresponding to the travelling expenses to the place of discharge, if any such place has been agreed upon, otherwise to the place of engagement, together with expenses of maintenance during the voyage.

87. If the ship is not in a sea-worthy condition for the intended voyage and the master fails to take the measures requisite to put the vessel in a sea-worthy condition, the crew shall have the right to obtain their discharge. When more than half the number of the crew request that the seaworthiness of the ship should be ascertained, it is duty of the master for such purpose to

tighed, ligesom han ogsaa er forpligtet til, hvor saadant er muligt, at lade Maskinen besigtige, naar Maskinmesteren kræver det; vægrer han sig, har Mandskabet Ret til Afsked. Med Hensyn til Hyre og Rejsegodtgørelse gælde i begge Tilfælde Reglerne i § 86.

Findes det ved Besigtigelsen at de fremførte Anker mod Skibets Sedygtighed til den paatænkte Rejse have savnet rimelig Grund, skulle de, som have forlangt Besigtigelsen, erstatte al derved forarsaget Bekostning og Skade.

88. Mister Skibet Retten til at føre dansk Flag, kan Mandskabet straks forlange Afsked og har da Krav paa Hyre og Rejsegodtgørelse efter Reglerne i § 86. At der ellers forgaar Forandring i Rederiet, eller at Skibet faar en anden Fører, berettiger ikke Mandskabet til Fratrædelse.

89. Godtgøres det, at en Sømand er uduelig til den Tjeneste, hvortil han har ladet sig forhyre, kan han afskediges med at erholde Hyre til Afskeden. Det samme gælder, naar en Sømand lægger voldsom Haand paa Skipperen eller anden foresat, eller befindes om Bord at have skjult toldpligtigt Gods eller Gods, hvis Udførsel fra Afgangsstedet eller Indførsel paa Bestemmelsesstedet er forbudt, saa og naar en Sømand saa ofte er bleven straffet for Forseelser i Tjenesten, eller for Brud paa god Skik og Orden, at Skipperens Straffemyndighed efter § 102 maa blive uvirksom. Afskedigelse af en Sømand for Uduelighed kan paa fremmed Sted, hvor dansk Konsul findes, dog kun ske med dennes Godkendelse; er der ingen Konsul, er Skipperen pligtig at skaffe Sømanden fri Befordring til Forhyringsstedet, for saa vidt han ikke paa Stedet kan faa ny Hyre.

melse af dets Sjodygtighed og derunder, saavidt dertil efter Stedets Lovgivning er Adgang, lade Mandskabet afhøre; vægrer han sig, har Mandskabet Ret til Afsked.

Har de fremførte Anker mod Skibets Sjodygtighed til den paatænkte Reise savnet rimelig Grund, skal de, som har forlangt Besigtigelsen, erstatte enhver Bekostning og Skade, der er foranlediget ved deres Begjæring, dog ikke med over 3 Maaneders Hyre, medmindre de har handlet mod bedre Vidende.

Hyad i foregaaende Stykke er bestemt, finder tilsvarende Anvendelse, naar Maskinmesteren forlanger, at Maskinen skal foretage saadan Besigtelse.

Naar Afsked kan begjæres i Henhold til Bestemmelserne i denne Paragraf, gjælder med Hensyn til Hyre og Rejsegodtgørelse Reglerne i § 86.

88. Mister Skibet Retten til at føre norsk Flag, kan Mandskabet straks forlange Afsked og har da Krav paa Hyre og Rejsegodtgørelse efter Reglerne i § 86. At der ellers foregaar Forandring i Rederiet, eller at Skibet faar en anden Fører, berettiger ikke Mandskabet til Fratrædelse.

89. Godtgøres det, at en Sjømand er uduelig til den Tjeneste, hvortil han har ladet sig forhyre, kan han afskediges med at erholde Hyre til Afskeden. Det samme gælder, naar en Sjømand lægger voldsom Haand paa Skibsføreren eller anden Foresat eller befindes ombord at have skjult toldpligtigt Gods, som er toldpligtigt, eller hvis Udførsel fra Afgangsstedet eller Indførsel paa Bestemmelsesstedet er forbudt, saavel som naar en Sjømand er bleven straffet for Forseelser i Tjenesten eller Brud paa god Skik og Orden saa ofte, at Skibsføreren Straffemyndighed efter § 102 maa blive uvirksom. Afskedigelse af en Sjømand paa Grund af Uduelighed kan dog paa fremmed Sted, hvor der findes norsk Konsul, kun ske med dennes Godkjendelse. Er der ingen Konsul paa Stedet, er Skibsføreren pligtig at skaffe Sjømanden fri Befordring til Forhyringsstedet, forsaavidt

besigtiga fartyget i den ordning, 41 § bestämmer; dock att, der framställningen göres först efter det last intagits, befälhafvaren icke är pliktig att efterkomma densamma, med mindre styrman eller maskinist å fartyget deltagar i framställningen. Efterkommer befälhafvaren icke framställningen, ege sjöman rätt att blifva entledigad samt att erhålla hyra och reseersättning, som i 86 § sägs.

Befinnes vid anställd besigtning, att skäligh anledning till klagan saknats, skola de, som begärt besigtningen, ersätta all derigenom orsakad kostnad och förlust.

besigtiges, og det er muligt at

besigtiges, og det er muligt at

88. Försäljes fartyget till utländsk man eller upphör det annorledes att vara svenskt, ege sjöman rätt att genast blifva entledigad samt erhålla hyra och reseersättning, som i 86 § sägs. Timar annan förändring af eganderätten till fartyget eller ombytes befälhafvare, vare det ej laga skäl för besättningen att lemna tjensten.

89. Finnes sjöman vara oduglig till den tjenst, för hvilken han blifvit förhyrd, må sjömannen entledigas mot åtnjutande af hyra till afskedandet. Lag samma vare, der sjöman bär våldsam hand å befälhafvaren eller annan förman eller beträdes med att hafva ombord undanstuckit tullpligtigt eller till införsel i afgångsorten eller till införsel i bestämmelseorten förbjudet gods eller upprepade gånger blifvit för fel i tjensten eller för brott mot ordning och skick af befälhafvaren straffad, utan att han låtit sig deraf rätta.

## Danish Text.

in order to ascertain its seaworthiness; he is also, should the engineer so demand, bound to permit that the engines be inspected, where this is possible; should he refuse, the crew have a right to demand their discharge. With reference to wages and travelling expenses, the regulations in § 86 are applicable in both cases.

If on surveying the ship it is found that the complaints against the seaworthiness of the same for the intended voyage lack reasonable ground, the persons who have demanded the survey shall compensate all loss and expense occasioned thereby.

## Norwegian Text.

worthiness of the ship ascertained, and, at the same time, to take the evidence of the crew, provided this can be done according to the law of the place. In the event of his refusal, the crew shall be entitled to their discharge.

If there has been no reasonable cause for the complaints made as regards the unseaworthiness of the ship for the intended voyage, the parties who have demanded the survey shall make good all costs, loss or damage caused by their request, to an amount not exceeding the amount of their wages for 3 months, provided they have not acted *mala fide*.

The rules contained in the preceding section (paragraph) shall also apply when the engineer requests a survey to be held of the engines, provided this be feasible under the circumstances.

When, in conformity with the rules contained in this paragraph (Article), the seamen are entitled to their discharge, the rules of § 86, regarding their right to wages and compensation for travelling expenses, shall be complied with.

## Swedish Text.

cause the vessel to be surveyed in the manner stipulated in Art. 41. Should such request, however, not be made before a cargo has been loaded, the master shall not be bound to yield to such representation unless the mate or engineer is a party thereto. If the master does not yield to the representation, the seaman shall have the right to be discharged and to receive his wages and travelling expenses according to Art. 86.

If, on surveying the ship, it is found that there was no reasonable ground for complaint, the parties requesting the survey shall compensate all loss and expense occasioned thereby.

held of the engines, provided this be feasible under the circumstances.

When, in conformity with the rules contained in this paragraph (Article), the seamen are entitled to their discharge, the rules of § 86, regarding their right to wages and compensation for travelling expenses, shall be complied with.

88. Should the ship lose the right to carry the Danish flag, the crew can immediately demand their discharge, and have a claim to wages and travelling expenses according to the regulations contained in § 86. No other change with regard to the owners nor change of master constitutes a valid reason for the crew to leave the service.

89. If it is proved that a seaman is unfit for executing the work for which he has been engaged, he can be dismissed on condition of wages being paid to him up to the time of his dismissal. The same is applicable when a seaman uses violence against the master or any other of his superiors, or is found guilty of having concealed on board goods subject to custom duties, or goods the export of which from the port of departure or import to the place of destination is forbidden, and also when a seaman has been so often punished for faults in the service, or for breach of order and discipline, that the master's authority of punishing according to § 102 is inefficient. A seaman can in a foreign place, where there is a Danish Consul, only be dismissed for incapacity with the Consul's approval; if there is no Danish Consul, the master is bound to secure the seaman

88. If the ship loses its right of carrying the Norwegian flag, the crew may at once demand their discharge, and claim wages and compensation for travelling expenses according to the rules of § 86, but a change of owners, or the appointment of a new master, does not entitle the crew to their discharge.

89. If a seaman is proved to be incapable of performing the service for which he is engaged, he may be discharged, provided his wages are paid to him up to the date of his dismissal. The same rule shall be applicable if a seaman assaults the master or a superior officer, or if it is proved that he has concealed on board any goods subject to customs duties, or whose exportation from the place of departure, or importation to that of destination, is prohibited, or if a seaman has been punished so many times for neglect of duty or breach of good conduct or discipline, that the right of the master to inflict punishment has become void by virtue of § 102, provided always, that no seaman may be dismissed on account of incapacity at a place where there is a Norwegian Consul, without the consent of the Consul. If there is no

88. Should the ship be sold to any foreign subject or otherwise cease to be Swedish, the seaman shall have the right immediately to be discharged and to receive wages and travelling expenses according to Art. 86. No other change in the ownership nor change of master shall constitute any valid reason for the crew to leave the service.

89. Any seaman found unfit for the position in which he has been engaged, may be discharged, wages being paid to him up to the time of discharging. The same law shall also apply when a seaman has committed any act of violence against the master or any other of his superiors; or has been found guilty of having concealed on board dutiable goods or goods prohibited to be exported from the port of departure or imported into the port of destination; or has been repeatedly punished by the master for faults in the service or for breach of order and discipline on board and has failed to amend his conduct.

han ikke paa Afskedigelsesstedet kan faa ny Hyre.

Kan eller vil Skipperen ikke straks afskedige en udelig Sømand, har han Ret til at nedsætte hans Hyre for Fremtiden, efter Omstændighederne indtil det halve; det staar dog Sømanden frit for at paaklage saadan Beslutning af Skipperen paa den i § 104 foreskrevne Maade.

De Omstændigheder, som begrundes Sømandens Afskedigelse eller Nedsættelse af hans Hyre, bør indføres i Dagbogen, hvis saadan føres om Bord, og ellers skriftlig optegnes, og deres Rigtighed bekræftes ved Vidnesbyrd af to af de bedste Mænd om Bord, efter at det tilførte eller nedskrevne er blevet oplæst for Sømanden og det øvrige Mandskab. Sker dette ikke, er Beslutning om Hyrenedsættelse uden Gyldighed.

90. Bliver nogen af Mandskabet syg eller beskadiget, er det Skipperens Pligt at skaffe ham fornøden Pleje om Bord eller i Land; men er han i den Tilstand, at han for længere Tid er uskikket til at gøre sin Tjeneste, eller lider han af venerisk Sygdom, kan han straks afskediges. Sker dette i Udlandet, skal Skipperen overgive ham til Konsulen eller, hvis der ikke er dansk Konsul paa Stedet, paa anden Maade skaffe ham paalidelig Pleje.

Afskediges en Sømand paa Grund af Skade eller Sygdom, som han har paadraget sig ved egen Brøde, eller paa Grund af venerisk Sygdom, faar han kun Hyre for den Tid, han har gjort Tjeneste, og deri kan afkortes Omkostningerne ved hans Pleje.

Kan eller vil Skibsføreren ikke straks afskedige en udelig Sjømand, har han Ret til at nedsætte hans Hyre for Fremtiden, efter Omstændighederne indtil det Halve; dog staar det Sjømanden frit for at paaklage saadan Beslutning af Skibsføreren paa den i § 104 foreskrevne Maade.

De Omstændigheder, som bevirker Sjømandens Afskedigelse eller Nedsættelsen af hans Hyre, bør indføres i Dagbogen, hvis saadan føres ombord, og ellers paa anden Maade optegnes, hvorhos deres Rigtighed bør bekræftes ved Vidnesbyrd af to af de bedste Mænd ombord, efterat det Tilførte eller Nedskrevne er bleven oplæst for Sjømanden og det øvrige Mandskab. Er disse Regler ikke iagttagne, er Beslutning om Hyrens Nedsættelse uden Gyldighed.

Den, der i Medfør af nærværende Paragraf er afskediget, eller hvis Hyre er nedsat, er berettiget til at faa en Afskrift af, hvad der er tilført Dagbogen eller paa anden Maade optegnet angaaende Afskedigelsen eller Hyrens Nedsættelse.

90. Bliver nogen af Mandskabet efter tiltraadt Tjeneste syg eller beskadiget, er det Skibsføreren Pligt at skaffe ham fornøden Pleje ombord eller iland; men er han i den Tilstand, at han for længere Tid er uskikket til at gøre sin Tjeneste, eller lider han af Syfilis, kan han straks afskediges. Sker dette i Udlandet, skal Skibsføreren overgive ham til Konsulen eller, hvis der ikke er norsk Konsul paa Stedet, paa anden Maade skaffe ham paalidelig Pleje.

Afskediges en Sjømand paa Grund af Skade eller Sygdom, som han har paadraget sig ved egen Brøde, eller paa Grund af Syfilis, faar han kun Hyre for den Tid, han har gjort Tjeneste, og deri kan afkortes Omkostningerne ved hans Pleje. Af-

Afskedas ieke sjöman, som är oduglig till tjensten, ege befälhafvaren för den kommande tiden nedsätta hans hyra, efter omständigheterna intill hälften, dock med rätt för sjömannen att öfverklaga beslutet i den ordning, som i 104 § stadgas.

De omständigheter, hvilka föranleda sjömannens entledigande eller hyrans nedsättande, böra skriftligen upptecknas och det antecknade, sedan det blifvit för sjömannen och den öfriga besättningen uppläst, till riktigheten bestyrkas genom intyg af två de bäste männen ombord; føres dagbok, skall anteckningen ske i denna. Beslut om hyrans nedsättande vare utan verkan, der befälhafvaren ieke iakttagit hvad sålunda är föreskrifvet.

90. Blifver sjöman sjuk eller skadad, skall befälhafvaren åt honom bereda nödig vård ombord eller i land; är han till följd af sjukdomen eller skadan för längre tid satt ur stånd att fullgöra sin tjänst, eller är han behäftad med venerisk sjukdom, ege befälhafvaren entlediga honom ur tjensten. Nödgas befälhafvare qvarlemnna sjuk sjöman å utländsk ort, skall han öfverlemnna honom till svensk konsul eller, om sådan tjänsteman der ieke finnes, anordnes sörja för att han erhöles lämplig vård.

Afskedas sjöman till följd af skada eller sjukdom, som han genom eget groft vållande ådragit sig, eller derför att han funnits behäftad med venerisk sjukdom, njute han ej hyra för längre tid, än han förrättat sin tjänst, och kostnaden för hans

## Danish Text.

free passage to the port of engagement, in so far as he is unable to get a new engagement in that place.

If the master cannot or will not discharge an incapable seaman at once, he has the right to lower his wages in future according to circumstances, but in no case to an extent of more than one half. The seaman shall have a right, however, to appeal against any such decision of the master in the manner laid down in § 104.

The circumstances causing a seaman's discharge or a reduction of his wages are to be entered in the logbook, if such is kept on board, and otherwise put down in writing, and its correctness be corroborated by the testimony of two of the best men on board, after having been read aloud before the seaman and the rest of the crew. Should this not have been observed, the decision regarding the reduction of wages is not valid.

90. Should any of the crew fall ill or get injured, it is the master's duty to provide for the necessary nursing on board or ashore; but should he be in such a condition that he will be for a long period incapable of performing his duties, or if he is suffering from venereal disease, he can immediately be discharged. Should this happen in a foreign country, the master shall hand him over to the Consul, or if there is no Danish Consul in the place, he must otherwise take care that the seaman is properly nursed.

Should a seaman be discharged on account of injury or illness from his own fault, or on account of venereal disease, he shall only receive wages for the time served, and from that may be deducted the cost of nursing. If he is

## Norwegian Text.

such Consul at the place, the master shall defray the travelling expenses of the seaman to the place where he was engaged, provided he cannot procure him another engagement at the place of discharge.

If the master cannot, or if he is not willing to, at once dismiss an incapable seaman, he shall be entitled to make a reduction of his future wages, not exceeding one half of their amount, according to circumstances, but the seaman shall be entitled to appeal from such decision according to the rules of § 104.

The circumstances connected with the dismissal of the seaman, or the reduction of his wages, ought to be entered in the log book, if one is kept, or otherwise noted down in writing. The facts thus noted down should be confirmed by the evidence of two of the chief men on board, after being read aloud to the seaman and the rest of the crew. In the event of the non-observance of these rules the decision of the master as to the reduction of the wages of a seaman shall not be valid.

If, by virtue of the rules of this paragraph (Article), a seaman is dismissed, or if his wages have been reduced, he shall be

90. If any member of the crew is taken ill, or has been injured after commencing his service, it is the master's duty to procure him the necessary treatment on board or ashore, but if his condition is such as to unfit him for service for a long term, or if he is suffering from syphilis, he may be dismissed at once. If this takes place abroad the master shall hand him over to the Consul, or, if there is no Consul at the place, otherwise provide for his proper maintenance.

If a seaman is dismissed on account of illness, or injuries contracted by his own default, or syphilis, his wages shall be payable only for the time of his service, and there may be deducted therefrom the expenses incurred by his treat-

## Swedish Text.

If the seaman, found unfit for the position for which he has been engaged, is not discharged, the master shall have the right for the time subsequent, to reduce his wages according to circumstances but in no case to less than one half. The seaman shall have the right, however, to appeal against the decision in the manner laid down in Art. 104.

The circumstances leading to the discharge of the seaman or to the reduction of his wages should be put down in writing, and such entry should thereupon be certified by two of the best men on board, after having been duly read to the seaman and the rest of the crew. If a logbook is kept, the entry shall be made therein. Decisions as to reduction of wages shall have no effect, unless the aforesaid prescriptions have been duly observed by the master.

been reduced, he shall be of the entries in the log book, down concerning his dismissal

90. If a seaman falls ill or gets injured, the master shall provide for the requisite nursing on board or on shore. If from illness or injury rendered unable to work for any longer period, or if suffering from venereal disease, the master shall have the right to discharge him. In case a master is obliged to leave a sick seaman behind at a foreign port, he is to deliver him into the charge of the Swedish Consul, or, should no such official reside in the port, he shall otherwise take care that the seaman receives proper nursing.

If a seaman is discharged on account of illness or damage through his own gross carelessness, or on account of venereal disease, his wages are only to be paid for the time served, and the expenses in connection with his nursing and treatment

## Dansk Text.

Afskediges han ikke, faar han ingen Hyre for den Tid, han ikke kan gøre sit Arbejde, og maa betale Omkostningerne ved sin Pleje.

I alle andre Tilfælde af Skade eller Sygdom nyder den syge, naar han ikke afskediges, sin fulde Hyre under Sygdommen og nødvendig Pleje for Rederiets Regning. Men afskediges han, tilkommer der ham Hyre til Afmonstringen eller, hvis saadan ikke finder Sted, til den Dag, da Skibet afsejler, og derhos Pleje for Rederiets Regning i 4 Uger her i Riget saavel som paa Sted i Udlandet, hvor han lovlig kunde afskediges, men ellers i 8 Uger, at regne fra Afmonstringen eller, hvis saadan ikke finder Sted, fra Skibets Afreise.

Findes der ikke dansk Konsul, til hvem den syge kan overgives, og Skipperen derfor nødes til at gøre Udlæg til Sygepleje i Udlandet for dansk Sjomand, som Rederiet efter foranstaaende Bestemmelser ikke er forpligtet til at afholde, er Rederiet berettiget til at kræve Erstatning af Statskassen. Denne kan ikke rejse noget Krav mod den paagældende Sjomand.

91. Opgives Rejsen paa Grund af Krig, Blokade, Embargo, Ud- eller Indforselsforbud, Ishindring eller Skade, som gør Skibet udygtigt til Rejsen, eller maa Skibets Rejse eller dennes Fortsættelse af saadan Grund opsættes for længere Tid, kan Mandskabet afskediges mod at erholde Hyre til Afskeden.

Forulykker Skibet, eller erklæres det efter indtruffen Solykke for uistandsætteligt, eller opbringes og prisdommes det eller tages det af Sjørøvere, opfører Mandskabets Tjenesteforhold og dermed dets Ret til videre Hyre. Naar Skibet har lidt Skibbrud, paaligger det dog

## Norsk Text.

skediges han ikke, faar han ingen Hyre for den Tid, han ikke kan gjøre sit Arbeide, og maa han betale Omkostningerne ved sin Pleie.

I alle andre Tilfælde af Skade eller Sygdom nyder den Syge, naar han ikke afskediges, sin fulde Hyre under Sygdommen og nødvendig Pleie for Rederiets Regning. Men afskediges han, tilkommer der ham Hyre til Afmonstringen eller, hvis saadan ikke finder Sted, til den Dag, da Skibet afseiler, og derhos Pleie for Rederiets Regning i 4 Uger her i Riget saavel som paa Sted i Udlandet, hvor han efter Hyrekontrakten kunde afskediges, men ellers i 12 Uger, at regne fra Afmonstringen eller, hvis saadan ikke finder Sted, fra Skibets Afreise.

Findes der ikke norsk Konsul, til hvem den Syge kan overgives, og Skipsføreren derfor nødes til at gjøre Udlæg til Sygepleie i Udlandet for norsk Sjomand, som Rederiet efter foranstaaende Bestemmelser ikke er forpligtet til at afholde, er Rederiet berettiget til at kræve Erstatning af Statskassen. Denne kan ikke reise noget Krav paa den paagældende Sjomand.

91. Opgives Rejsen paa Grund af Krig, Blokade, Embargo, Ud- eller Indforselsforbud, Ishindring eller Skade, som gjør Skibet udygtigt til Rejsen, eller maa Skibets Reise eller dennes Fortsættelse af saadan Grund opsættes for længere Tid, kan Mandskabet afskediges mod at erholde Hyre til Afskeden.

Forulykker Skibet, eller erklæres det efter indtruffen Solykke for uistandsætteligt, eller opbringes og prisdommes det, eller tages det af Sjørøvere, opfører Mandskabets Tjenesteforhold og dermed dets Ret til videre Hyre. Naar Skibet har lidt Skibbrud, paaligger det dog

## Svensk text.

skötsel och vård må afkortas på hans innestående hyra. Entledigas han icke, njute han ej hyra för den tid, han är ur stånd att förrätta sin tjänst, och ersätta kostnaden för skötsel och vård.

Sjöman, som eljest, medan han är i tjänst, varder sjuk eller skadad, njute full hyra äfvensom sjukvård på redarens bekostnad så länge han är kvar i tjänsten; varder han entledigad, erhålle han hyra till dess han afnönstras eller, om afmonstring icke eger rum, till den dag, då fartyget går vidare, äfvensom sjukvård på redarens bekostnad under fyra veckor, räknade från den dag, då hans rätt till hyra upphörde.

Har befälhafvare å ort, der svensk konsul ej finnes, nödgats för svensk sjömans sjukvård göra utgift, som, enligt hvad ofvan är sagdt, icke ålegat redaren, eller förskjuten mer, än denne ålegat; ege redaren därför undfå ersättning af allmänna medel.

91. Inställes resa till följd af krig, blockad, embargo, ut- eller införselsförbud, ishinder eller skada, som gör fartyget odugligt för resan, eller varder fartyget i afgångshamnen eller under resan af sådan anledning för längre tid uppehållet; må besättningen entledigas mot åtnjutande af hyra till afskedandet. Förölyckas fartyget, eller förklaras det efter timad skada icke vara istandsättligt, eller uppbbringas det och prisdomes, eller tages det af sjöröfware, upphøre hyresaftalet att vara gällande och besättningen erhålle hyra till och med den dag, då tjänstgöringen upphörde; dock åligger besättningen efter timad olycka att, mot skälig ersättning, deltaga i bergningen äfvensom kvarstanna



## Danish Text.

not discharged, he shall not receive wages for the period during which he is unable to do his work, and must reimburse the expenses incurred for his nursing.

In all other cases of injury or illness the sick person shall, when not dismissed, receive his full wages during his illness and the necessary nursing at the expense of the owners. But should he be discharged, wages are due to him up to the date of his discharge or, if no discharge takes place, up to the day when the ship departs, in addition to which he is entitled to nursing and treatment at the expense of the owners for a term of four weeks when in the Kingdom as well as in a port in a foreign country where he could be legally discharged, but otherwise for eight weeks to be reckoned from the day of his dismissal or, if no discharge took place, from the departure of the ship.

If there is no Danish Consul to whom the sick person can be handed over, and the master, therefore, is obliged to make any disbursement for the nursing of a Danish seaman in a foreign country, which the owners, according to the above provisions, are not bound to pay, the owners have a right to demand reimbursement from the Exchequer. The latter shall have no claim on the seaman in question.

**91.** Should the voyage be relinquished on account of war, blockade, embargo, prohibition of export or import, hindrances by ice or injury rendering the ship unfit for the voyage, or should the ship's voyage or its continuation be postponed from such reasons for any considerable length of time, the crew may be discharged on condition of receiving their wages up to the date of their discharge.

Should the ship be wrecked or, after having met with a casualty, be declared a total loss, or be captured and declared a good prize, or be taken by pirates, all contracts with the crew cease and therewith their right to further wages. In case the ship has been

## Norwegian Text.

ment and care. If he is not dismissed, his wages shall be forfeited for the time he is incapable of working, and he must himself pay the expenses incurred by his treatment.

In all other cases of sickness or injury, a sick or injured seaman shall, if he is not dismissed, be entitled to enjoy his full wages during his illness, and the necessary treatment at the cost the owners. If he is dismissed he shall receive his wages until his discharge takes place, or if no discharge takes place, up to the day of the departure of the ship, and, besides, treatment and maintenance at the expense of the owners during 4 weeks, if in Norway, or at any place abroad where, under the agreement, the seaman may be dismissed, but otherwise during 12 weeks, counting from the discharge of the seaman, or, if no discharge takes place, from the departure of the ship.

If there is no Norwegian Consul at the place, to whom the sick seaman can be handed over, and the master is thereby compelled to make advances for the medical care and maintenance of a Norwegian seaman abroad, which, according to the rules herein above contained, the owners are not bound to bear, such owners shall be entitled to demand reimbursement of their advances from the State Treasury. The State cannot make any claim on the seaman on account of such outlays.

**91.** If the voyage is abandoned on account of war, blockade, embargo, prohibition of importation or exportation, ice, or damage, by which the ship is rendered unfit for the voyage, or if the voyage, or the continuation thereof, is suspended for any such reason for any considerable period, the crew may be dismissed on payment to them of their wages up to the date of their dismissal.

If the ship is lost, or declared to be incapable of repair in consequence of damage sustained at sea, or if it is captured, or condemned as a prize, or taken by pirates, the services of the crew, and their right to further wages, shall terminate. In case of a shipwreck

## Swedish Text.

may be deducted from the wages due. If he is not discharged, he is not to be paid wages for the time he is unable to work, and shall be bound to reimburse the expenses incurred for nursing and treatment.

Any seaman who otherwise falls ill or gets injured in the service shall draw full wages, and shall be doctored and cared for at the expense of the owners, as long as he remains in the service. If he is told to leave the service, he shall receive his wages until the date of discharge, or, should no discharge take place, up to the day the ship sails, in addition to which he is entitled to nursing and treatment at the expense of the owners for a term of four weeks reckoned from the day when his right to wages ceased.

Should, in a port where no Swedish Consul resides, the master have been obliged to make any disbursement for the nursing and treatment of a Swedish sailor, which the owners according to the foregoing articles are not bound to pay, or, should he have had to advance more than the owners are liable to pay, the latter shall be reimbursed from public funds.

**91.** If a voyage is discontinued owing to war, blockade or embargo, prohibition of export or import, hindrances by ice, or damage which renders the ship unfit for the voyage, or should the ship from such reason be detained for any considerable length of time, the crew may be discharged on being paid wages up to the date of dismissal. Should the ship be wrecked or declared a constructive total loss after having sustained damage, or if she is captured and declared a good prize or taken by pirates, the agreement shall cease to be in force, and the crew shall receive their wages up to the date on which the service ceased. It is the duty of the crew, however, in

Mandskabet mod passende Godtgørelse at deltage i Bjergningen og at blive til Stede til Søforklaringes Afgivelse.

Mandskabet mod passende Godtgjørelse at deltage i Bergningen og at blive tilstede for at afgive Sjøforklaring.

till dess sjöforklaringen afgifvits.

92. Opgives Rejsen af anden Aarsag end i § 91 nævnt, eller afskediges Somand ellers uden lovlig Grund og uden særlig Hjemmel i Hyrekontrakten, har den afskedigede Krav paa Hyre og Rejsegodtgørelse efter Reglerne i § 86; det samme gælder, naar Skibet oplægges i Vinterhavn i Udlandet og Mandskabet afskediges, dog saaledes at den i Paragraffen bestemte Tillægshyre for en Maaned bortfalder.

92. Opgives Reisen af anden Aarsag end i § 91 nævnt, eller afskediges Sjomand ellers uden lovlig Grund og uden særlig Hjemmel i Hyrekontrakten, har den Afskedigede Krav paa Hyre og Rejsegodtgjørelse efter Reglerne i § 86; det samme gælder, naar Skibet oplægges i Vinterhavni Udlandet og Mandskabet afskediges, dog saaledes, at den i Paragrafen bestemte Tillægshyre for en Maaned bortfalder.

92. Inställes resa af annan orsak, än i 91 § sägs, eller entledigas eljest sjöman utan laga skäl, njute den entledigade hyra och reseersättning efter ty i 86 § sägs; dock att, i händelse fartyget å utrikes ort upplägges i vinterhamn och besättningen af sådan anledning afskedas, den i 86 § stadgade tilläggs hyra för en månad icke skall utgå.

93. Dør nogen af Skibsmandskabet, beregnes Hyren til Dødsdagen, for saa vidt hans Ret til Hyre ikke paa Grund af Sygdom eller af anden Aarsag tidligere er ophørt. Rederiet er forpligtet til at bekoste hans Begravelse.

93. Dør nogen af Skibsmandskabet, beregnes Hyren til Dødsdagen, forsaavidt hans Ret til Hyre ikke paa Grund af Sygdom eller anden Aarsag tidligere er ophørt. Dør en Sjomand i Tjenesten, eller dør han, efter at være afskediget, af Sygdom eller Skade, for hvilken der paahviler Rederiet Forpleiningspligt, bekoster dette hans Begravelse.

93. Afhuden sjömans hyra utgår till dödsdagen, der icke hans rätt till hyra på grund af sjukdom eller af annan anledning förut upphört. Kostnaden för hans begravning skall redaren vidkännas.

Bliver Skibet borte, uden at det kan oplyses, paa hvilket Tidspunkt Ulykken indtraf, beregnes Mandskabets Hyre efter Regelen i § 67.

Bliver Skibet borte, uden at det kan oplyses, paa hvilket Tidspunkt Ulykken indtraf, beregnes Mandskabets Hyre efter Regelen i § 67.

Föroläckas fartyg med man och allt, utan att upplysning kan vinnas om tiden, då olyckan inträffade, vare om hyrans beräknande lag, som i 67 § sägs.

94. Er Hyre betinget med bestemt Beløb for Rejsen, og denne forandres saaledes, at den kommer til at vare længere end ved Forhyringen forudsat, have Skibsfolkene Krav paa forholdsmaessigt Tillæg; at Rejsen forkortes, har derimod ingen Indflydelse paa deres Ret til den fulde betingede Hyre. Endvidere tilkommer der dem Tillægshyre, ikke alene for Ophold, som er en Følge af Reders eller Skippers vilkaarlige Beslutning, eller hvori en af disse paa anden Maade er Skyld, men ogsaa for den Tid, Skibet nedsages til at ligge stille for Krig, Blokade, Embargo, Ud- eller Indforselsforbud eller Ishindring eller opholdes i Nodhavn, som anløbes for Skibets Istandsaetelse eller for Ladningens Skyld, saa og for den Tid, Skibet under Lastning eller Losning opholdes

94. Er Hyre betinget med bestemt Beløb for Reisen, og denne forandres saaledes, at den kommer til at vare længere end ved Forhyringen forudsat, har Skibsfolkene Krav paa forholdsmaessigt Tillæg; at Reisen forkortes, har derimod ingen Indflydelse paa deres Ret til den fulde betingede Hyre. Endvidere tilkommer der dem Tillægshyre ikke alene for Ophold, som er en Følge af Rederens eller Skibsførerens vilkaarlige Beslutning, eller hvori disse paa en eller anden Maade er Skyld, men ogsaa for den Tid, Skibet nedsages til at ligge stille for Krig, Blokade, Embargo, Ud- eller Indforselsforbud eller Ishindring eller opholdes i Nodhavn, som anløbes for Skibets Istandsaetelse eller for Ladningens Skyld, ligeledes for den Tid, Skibet under Lastning eller

94. Är sjöman förhyrd mot visst belopp för resa och ändras denna, så att den kommer att vara längre tid, än vid förhyringen antogs, ege sjömannen åtnjuta motsvarande tillägg till hyran; varder tjenstetiden genom resans förändring förkortad, skall den betingade hyran ändock utgå till fullo. Tilläggs-hyra skall ock, i händelse den för resan beräknade tid öfverskrides, utgå ieko allenast för uppehåll, som af redare eller befälhafvare vållats, utan äfven för den tid, fartyget nödgats ligga stilla för krig, blockad, embargo, ut- eller införsel förbud eller ishinder eller uppehållits i nödhäm, när fartyget för reparation eller för lastens behof nödgats anlöpå sådan, så ock för den tid, fartyget för lastning eller lossning uppehållits utöfver derför bestämda ligge-

## Danish Text.

wrecked, the crew is, however, bound, on condition of receiving a proper pay, to assist in the salvage, and to remain on the spot until the declaration in Court has been made.

92. Should the voyage be abandoned from any other reason than those mentioned in § 91, or should a seaman otherwise be discharged without valid reason or without special warrant in the hiring contract, the discharged has a right to demand wages and travelling expenses according to the regulations in § 86; the same is the case when the ship is laid up for the winter in a foreign country and the crew discharged; yet, in that case the additional wages for one month stipulated in the said paragraph are not to be paid.

93. Should any of the crew die, the wages shall be paid up to the day of his death, provided his right to wages has not previously ceased on account of illness or from any other cause. The ship-owners are bound to bear the expenses of his burial.

Should a ship be lost, and it cannot be determined at what time the disaster took place, the crew's wages are to be calculated in accordance with the prescription laid down in § 67.

94. If a seaman is engaged at a fixed amount for the voyage, and the voyage is subsequently altered so as to last longer than anticipated at the time of engagement, the seaman has a right to an adequate additional pay; should the voyage be shortened, this shall have no influence on the crew's right to receive the full pay contracted for. Besides, additional wages are due to them not only for any delay caused by an arbitrary decision of the ship-owners or the master, or which is due in some way or other to the fault of one of these persons, but also for the time during which the ship is compelled to lay up on account of war, blockade, embargo, prohibition of export or import, or hindrances by ice, or on account of detention

## Norwegian Text.

the crew must, however, at a fair remuneration, assist in salvage operations, and remain at the place in order to make the maritime declaration required.

92. If the voyage is abandoned for reasons other than those referred to in § 91, or if a seaman is otherwise dismissed without lawful reason, and contrary to the terms of the agreement, he shall be entitled to wages and travelling expenses as fixed by § 86, which rule shall also apply if when the ship is laid up in a winter harbour abroad, the crew is dismissed, in which case, however, the additional wages for one month, mentioned therein, shall not be payable.

93. If a seaman dies, his wages shall be paid up to the date of his death, provided they have not been forfeited on account of his illness, or for other previous reasons. If a seaman dies while in service, or if, after being discharged, he dies from any illness or injury which imposes on the owners the cost of treatment and care, the funeral expenses shall be defrayed by the owners.

If the ship is missing and it cannot be shewn when the disaster occurred, the wages of the crew shall be calculated according to the rules of § 67.

94. If the wages have been agreed to at a fixed amount for the voyage, and the voyage is so altered as to last longer than presumed at the time of hiring, the seamen of the ship are entitled to claim a proportional addition to their wages; but shortening of the voyage, on the other hand, shall not affect their right to the payment in full to them of the stipulated amount of wages. Furthermore the seamen shall be entitled to additional wages not only for detention which may be the result of the owners' or the master's voluntary actions, or for which these parties in one way or other are to blame, but likewise for such time as the ship may be compelled to lie idle on account of war, blockade, embargo, prohibition of

## Swedish Text.

case a casualty has occurred, to assist in the salvage in consideration of proper compensation, as well as to remain until the protest has been extended.

92. If a voyage be discontinued from any other reason than those mentioned in Art. 91, or should a seaman otherwise be discharged without valid reason, he shall receive wages and travelling expenses in conformity with the stipulations contained in Art. 86. Should, however, the ship be laid up for the winter in any foreign port and the crew on such account be discharged, the one month extra wages stipulated in Art. 86 shall not be paid.

93. The wages of a deceased seaman shall be paid up to the date of death, unless his right to wages has previously ceased on account of illness or from any other cause. The burial expenses are to be paid by the owner.

If the vessel is lost with all hands and no information can be obtained as to the time of the calamity, the wages are to be calculated in accordance with the law laid down in Art. 67.

94. If a seaman is engaged at a fixed amount for the voyage and the voyage is subsequently altered, so as to last longer than anticipated at the time of engagement, the seaman shall have the right to an adequate addition in wages. Should, on the other hand, the time served be shortened on account of such alteration of the voyage, the wages agreed upon shall in every case be paid in full. Extra wages shall also be paid in case the time calculated for the voyage is exceeded, not only for the delay caused by the master or owner, but also for the time during which the ship must remain in harbour on account of war, blockade, embargo, prohibition of export or import, or hindrances by ice, or, in case the ship has had

## Dansk Text.

ud over de bestemte Liggedage; saadan Tillægshyre beregnes dog ikke for kortere Ophold end 8 Dage i Træk, ej heller naar Rejsen ikke er bleven forlænget ud over den ved Forhyringen forudsatte Tid.

95. Dersom Mandskabet formindskes under Rejsen, men Skibsarbejdet udføres af de tilbageblivende, skal den ved Formindskelsen beparede Hyre for den Tid, Skibet er i Soen, fordeles mellem de tilbageblivende i Forhold til enhvers forøgede Arbejde.

Saadan Fordeling kan dog ikke kræves, for saa vidt Formindskelsen er bevirket ved Romning under saadanne Omstændigheder, at de tilbageblivende kunde have hindret den.

96. Finder Skipperen det i paatrængende Tilfælde nødvendigt at paalægge Mandskabet Arbejde til Losning eller Lastning paa Søndage eller Hjemlandets Helligdage, erholder enhver Mand, som deltager i saadant Arbejde, for saa vidt ikke andet er vedtaget, en særlig Godtgørelse, der bliver at beregne med  $\frac{1}{2}$  Dags Hyre for hvert paabegyndt Tidsrum af 2 Timer.

97. Er en Sømand forhyret for bestemt Rejse, men denne paa Grund af Bestemmelsesstedets Forandring kommer til at ende paa andet Sted end, hvor Afmonstring efter Hyrekontrakten skulde finde Sted, har han Krav paa at erholde, hvad Rejsen derhen med Underhold koster.

98. Ophører danske Søfolks Tjeneste af nogen af de i § 91 nævnte Grunde paa udenlandsk

## Norsk Text.

Losning opholdes udover de bestemte Liggedage; saadan Tillægshyre beregnes dog ikke for kortere Ophold end 8 Dage i Træk, ei heller, naar Rejsen ikke er bleven forlænget udover den ved Forhyringen forudsatte Tid.

95. Dersom Mandskabet formindskes under Rejsen, men Skibsarbejdet udføres af de tilbageblivende, skal den ved Formindskelsen indsparede Hyre for den Tid, Skibet er i Sjøen, fordeles mellem de tilbageblivende i Forhold til enhvers forøgede Arbejde.

Saadan Fordeling kan dog ikke kræves, forsaavidt Formindskelsen er bevirket ved Romning under saadanne Omstændigheder, at de tilbageblivende kunde have hindret den.

96. Finder Skipsforen det paatrængende nødvendigt (kfr. § 44) at maatte paalægge Mandskabet at arbejde med Losning eller Lastning paa Søndag eller anden her i Riget anordnet Helligdag, erholder enhver Mand, som deltager i saadant Arbejde, en særlig Godtgørelse, der bliver at beregne med  $\frac{1}{2}$  Dags Hyre for hvert paabegyndt Tidsrum af 2 Timer. Denne Bestemmelse kommer ikke til Anvendelse paa Skibe, som gjør regelmæssige Reiser mellem bestemte Steder efter forud offentliggjort Plan.

97. Er en Sjømand hyret for bestemt Reise, men denne paa Grund af Bestemmelsesstedets Forandring kommer til at ende paa andet Sted, end hvor Afmonstring efter Hyrekontrakten skulde finde Sted, har han Krav paa at faa udhelt, hvad Rejsen derhen med Underhold koster.

98. Ophører norske Sjøfolks Tjeneste af nogen af de i § 91 nævnte Grunde paa udenlandsk

## Svensk text.

dagar; dock att tilläggshyra icke må beräknas vid uppehåll, som icke varat åtta dagar å rad.

95. Varder besättningen under resa förminskad, men fullgöres ändock skeppstjensten af de kvarvarande, skall de afgångnes hyra för den tid, fartyget är till sjös, fördelas mellan de kvarblifne i mån af det ökade arbete, enhvar fått vidkännas.

Sådan fördelning må ej fordras, der besättningen minskats genom rymning och denna egt rum under sådana omständigheter, att det berott af de kvarvarande att hindra den.

96. Finner befälhafvare i trängande fall nödigt att å söndagar eller andra här i riket brukliga helgdagar ålägga besättningen att utföra arbete för lossning eller lastning, erhålle enhvar, som deltager i arbetet, särskild ersättning med en half dags hyra för hvarje påbörjad arbetstid af två timmar.

Hvad nu är stadgadt skall icke ega tillämpning å fartyg, som gör regelbundna resor mellan vissa orter efter en på förhand kungjord plan.

97. Är sjöman förhyrd för viss resa och kommer denna på grund af bestämmelseortens förändring att sluta å annan ort, än der afmönstring enligt hyresaftalet skulle ske, ege sjömannen rätt att erhålla rescersättning i penningar, motsvarande kostnaden för resa till afmönstringsorten samt för underhåll under resan.

98. Upphör, af anledning som i § 91 sägs, svensk sjömans tjenstgöring å utländsk ort,

## Danish Text.

in a port of refuge at which the ship has called in order to repair or for the sake of the cargo; and also for the time during which the ship, from loading or unloading, is detained over the fixed lying-days; such additional wages are, however, not reckoned for any delay of less duration than eight consecutive days, nor when the voyage has not been prolonged over and above the time assumed by the engagement.

95. If the number of the crew is reduced during the voyage, but the work on board is performed by those remaining, the amount of wages saved by the reduction shall, for the time the ship is at sea, be divided amongst the men remaining in proportion to everyone's increased labour.

Such division cannot be claimed if the number of the crew has been reduced through desertion under such circumstances that it might have been prevented by the remaining men.

96. Should the master, in cases of urgent necessity, think it necessary to impose any work for the loading or unloading of the ship upon the crew on Sundays or other days kept holy in the Kingdom, every man who partakes in such work shall receive, unless otherwise provided, a special compensation, which is to be calculated at the rate of half a day's wages for every two hours of working time commenced.

97. Should a seaman have been engaged for a definite voyage, and this voyage, on account of an alteration as to the port of destination, should end at some other place than that at which the discharge, according to the hiring contract, should take place, he has a right to compensation for travelling expenses corresponding to the cost of travelling to the port of discharge, together with board wages during the voyage.

98. Should a Danish seaman's service cease in a foreign place, for some of the

## Norwegian Text.

exportation or importation, or detention by ice, or in a port of refuge entered for the purpose of repairing the ship, or for the sake of the cargo, and also for such time as the ship may be detained while loading or discharging over and above the stipulated lay-days, but such additional wages shall not be calculated for shorter periods than 8 days at a stretch, or when the voyage has not been prolonged beyond the time presumed at the date of hiring.

95. If in consequence of a reduction of the number of the crew during the voyage the work has to be performed by the remainder, the wages saved thereby during the time the ship is at sea shall be divided between the rest in proportion to the additional work performed by each seaman.

Such compensation cannot be claimed, however, when the reduction of the crew is caused by desertion, if it is proved that the desertion has taken place under such circumstances that it might have been prevented by the remainder of the crew.

96. If the master deems it absolutely necessary (see § 44) to employ the crew in loading or discharging on Sundays or days set apart as holy-days in Norway, every seaman performing such work shall be entitled to an extra allowance of half a day's pay for each period of two hours' work commenced.

The provisions contained in this paragraph (Article) shall not be applicable to ships trading regularly between certain places according to a plan previously published.

97. If a seaman is engaged for a fixed voyage, and such voyage terminates, on account of changing the destination, at some place other than that at which the discharge of the seaman should have taken place in accordance with the terms of the agreement, such seaman is entitled to have paid to him the costs of travelling and maintenance to the place at which he should have been discharged.

98. If, in any such cases as are referred to in § 91, the service of any Norwegian sea-

## Swedish Text.

to call at a port of distress for repairing, or for the sake of the cargo, for the time the vessel has been thus detained; and further for the time the ship has been delayed over and above the stipulated lying-days. Extra wages are, however, not to be calculated for any delay of less duration than eight consecutive days.

95. If the number of crew is reduced during the voyage and the work on board nevertheless is performed by those remaining, the wages of the men missing shall, for the time the ship is at sea, be divided amongst the men remaining in the proportion of the increase of work.

Such division of wages cannot be claimed where the number of the crew is reduced through desertion, under such circumstances that the remainder of the crew might have prevented it.

96. Should the master find it necessary in urgent cases to order the crew to perform work for the loading or discharging of the vessel on Sundays or other days kept holy in the Kingdom, each of the crew partaking in the work shall receive an extra compensation at the rate of half a day's wages for every two hours of working time commenced.

The above regulation shall not apply on board ships plying regularly between certain places in accordance with a previously published itinerary.

97. If a seaman has been engaged for a certain voyage, and such voyage, on account of any alteration as to port of destination, should end at another port than that at which discharging should take place according to the agreement, he shall be entitled to compensation in cash for travelling expenses corresponding to the cost of travelling to the port of discharge and for subsistence during the voyage.

98. If from any of the reasons mentioned in Art. 91, the service of a Swedish sea-

Sted, eller efterlades danske Søfolk i Ulandet paa Grund af Skade eller Sygdom, hvorfor der efter § 90 tilkommer dem Pleje paa Rederiets Bekostning, have de Krav paa fri Hjemrejse med Underhold til nærmeste indenlandske Havn. Er Skibet forulykket eller efter lidt Havari erklæret for uistandsætteligt eller tages Skibet af Sørovere, bestrides Omkostningerne af Statskassen; dette gælder ogsaa, naar Skibet opbringes og prisdømmes, saafremt Skipperen var uvidende om Krigens Udbrud, da han sidst gik til Sos, og dette da heller ikke var bekendt paa Afsejlingsstedet. I alle andre Tilfælde bæres Omkostningerne af Rederiet.

Kan der for en Sømand, som saaledes har Krav paa Hjemsendelse, skaffes Tjeneste paa dansk, norsk eller svensk Skib, der er bestemt til indenlandsk Havn eller til Havn, hvorfra det falder bekvemt at sende ham hjem, er han pligtig at antage saadan Tjeneste, for saa vidt den ikke er ringere end den, hvori han var forhyret.

99. Under Rejsen kan en Sømand forlange sin fortjente Hyre udbetalt efterhaanden, enten i rede Penge, naar Skibet ligger i Havn, eller ved Anvisning paa Rederiet, dog saaledes at Skipperen i hvert Fald er berettiget til at tilbageholde en Tredjedel af Hyren indtil Afmonstringen.

Har en Sømand faaet udbetalt mere i Forskud, end der ved

Sted, eller efterlades norske Sjøfolk i Ulandet paa Grund af Skade eller Sygdom, hvorfor der efter § 90 tilkommer dem Pleie paa Rederiets Bekostning, har de Krav paa fri Hjemreise med Underhold til Hjemstedet. Er Skibet forulykket eller efter lidt Havari erklæret for uistandsætteligt, eller tages Skibet af Sjørovere, bestrides Omkostningerne af Statskassen; dette gjælder ogsaa, naar Skibet opbringes og prisdømmes, saafremt Skibsføreren ikke kjendte til Krigens Udbrud, da han sidst gik tilsjøs, og dette da heller ikke var bekjendt paa Afsejlingsstedet. I alle andre Tilfælde bæres Omkostningerne af Rederiet.

Kan der for en Sjømand, som saaledes har Krav paa Hjemsendelse, skaffes Tjeneste paa norsk, svensk eller dansk Skib, der er bestemt til det Land, hvortil Hjemsendelsen skal ske, eller til Havn, hvorfra det falder bekvemt at sende ham hjem, er han pligtig at tage saadan Tjeneste, forsaavidt den ikke er ringere end den, hvori han var forhyret. (*Lov af 11 Juni 1906.*)

99. Under Reisen kan en Sjømand forlange sin optjente Hyre udbetalt efterhaanden, enten i rede Penge, naar Skibet ligger i Havn, eller ved Anvisning paa Rederiet. Dog er Skibsføreren indtil Afmonstringen berettiget til at tilbageholde en Halvpart af den Del af Hyren, som Sjømanden har forbeholdt sig selv at hæve. Udenfor de i § 76 omhandlede Tilfælde kan derimod indrømmet Træk ikke uden Sjømandens eget Samtykke stoppes før Tjenestetidens Ophor, medmindre noget modsat Forbehold er taget, eller den øvrige Hyre er utilstrækkelig til at dække paadraget i Tjenesten.

Har en Sjømand faaet udbetalt mere i Forskud, end der

eller varder svensk sjöman för sjukdom eller skada, därför han enligt 90 § eger erhålla vård på redarens bekostnad, å sådan ort qvarlemnad, ege sjömannen rätt att blifva fortskaffad till närmaste svenska hamn. Har fartyget förolyckats eller tagits af sjörofvare eller efter timad skada förklarats icke vara istandsättligt, eller har fartyget efter uppbringning förklarats för god pris och var icke, när fartyget sist lemnade hamn, krigets utbrott der känt eller eljest befälhafvaren kunnigt, skall kostnaden för hermesan bestridas af allmänna medel.

Kan åt sjöman, som af anledning, nu är sagd, skall hem-sändas, beredas tjänst å svenskt, norskt eller danskt fartyg, hvilket är bestämdt till det land, dit sjömannen skall fortskaffas, eller till hamn, hvarifrån han bekvämligen kan befordras till hemlandet; vare sjömannen pligtig att antaga tjänsten, så framt han anställs i samma egenskap, som den, hvori han förut var förhyrd, och på lika förmånliga vilkor. (*Lag af 27 April 1906.*)

99. Af hyra ege sjöman, i den mån den är förtjent, under resan utbekomma intill två tredjedelar; när fartyget ligger i hamn, skall hyran utbetalas i reda penningar, men vill sjöman amanstädes utbekomma hyresfordran, ege befälhafvaren för beloppet lemna anvisning å redaren. En tredjedel af hyran ege befälhafvaren innehålla till dess sjömannen entledigas.

Befinnes vid sluträkning sjöman hafva i förskott uppburit

ad § 99 N. Det er i den norske Skibsfart almindelig Brug, at Skibsfolk, som ved sin Afreise efterlader nære Paarørende, faar saakaldet Træk eller Trækseddel af Skibsføreren for dem, d. v. s. de Paarørende faar Anvisning paa en Del af Sømandens Hyre, som hæves maanedlig hos Rederiet eller hos en paa Stedet værende Kommissionær.

## Danish Text.

reasons mentioned in § 91, or should a Danish seaman be left behind in a foreign land on account of illness or injury, for which, according to § 90, he is entitled to nursing at the expense of the ship-owners, he has a right to demand a free passage home together with cost of maintenance to the nearest Danish port. Should the ship be wrecked, or, after having sustained average, be declared a total loss, or should it be taken by pirates, the expenses shall be defrayed by the Exchequer; the same is the case if the ship is seized and held as a prize, provided the master was unacquainted with the outbreak of the war when he last set sail, and this was not otherwise known at the port of departure. In all other cases the expenses shall be born by the shipowners.

If an employment, therefore, can be found for a seaman, who has a right to be sent home for any of the reasons as aforesaid, on board a Danish, Norwegian or Swedish ship bound for a home port or a port from which he can be conveniently sent home, the seaman shall be bound to accept the employment, provided always that it is not inferior to that in which he was engaged before.

99. During the voyage a seaman can demand his earned wages to be paid out by degrees, either in cash, when the ship is lying in port, or by cheque on the ship-owners. The master is, however, in any case entitled to withhold one third of the wages until the discharge.

## Norwegian Text.

man terminates abroad, or if a Norwegian seaman when left behind abroad on account of any injury or illness is entitled by virtue of § 90 to maintenance at the expense of the owners, such seaman shall be entitled to a free passage home with subsistence to the place to which he belongs. If the ship is lost or, on account of damages sustained, is declared to be unfit for repairs, or is captured by pirates, the expenses shall be paid by the State, and this shall likewise hold good if the ship is captured and condemned as a prize, provided the master was not aware of the outbreak of war when he last put to sea, and it was also unknown at the port of departure. In all other cases the expenses shall be defrayed by the owners.

If a situation can be obtained for a seaman thus entitled to a passage home on board any Norwegian, Swedish or Danish ship bound for the country to which the seaman is to be conveyed, or any port conveniently situated for the sending home of the seaman, he shall be bound to accept such engagement if in a capacity not inferior to the rank he last held under the agreement. (*Law of June 11th 1906.*)

99. A seaman can demand that his wages be paid to him from time to time during the voyage, either in cash, if the ship is in a port, or by a draft on the owners, but the master shall always be entitled to retain, until the discharge of the seaman, one half of the amount which the seaman has stipulated on having paid direct to himself. Except in the cases mentioned in § 76, no allotment note issued can be stopped before the termination of the services of the seaman without his consent, unless an express stipulation to such effect has been made, or the rest of the wages are not sufficient to cover the amount of compensation or fine the seaman may have incurred while in the service of the ship.

## Swedish Text.

man ceases at a foreign port, or if a Swedish seaman is left behind at any such port on account of illness or injury, for which he is entitled to nursing and treatment at the expense of the owners, in accordance with Art. 90, the seaman shall have the right to a passage to the nearest Swedish port. If the ship is lost or taken by pirates or declared a constructive total loss subsequent to having sustained a damage, or should the ship have been declared a good prize after having been captured, provided the outbreak of the war was not known in the port when the vessel last left it, nor otherwise known to the master, the cost of conveyance home shall be paid from public funds.

If employment for a seaman, who is to be sent home on such grounds as aforesaid, can be found on board a Swedish, Norwegian or Danish ship bound to a place in Sweden or to a port whence he can be conveniently conveyed home, the seaman shall be bound to accept the employment, provided always that he is engaged in the same capacity as before, and on equally favourable terms. (*Law of the 27th April, 1906.*)

99. Any seaman shall have the right to receive during the voyage up to two thirds of his wages, as they are earned; when the ship is in port, the wages are to be paid in cash, but should the seaman desire to obtain anywhere else the amount claimed as wages, the master shall have the right to give him an order on the owners for the amount. The master shall have the right to retain one third of the wages until the seaman is discharged.

Should a seaman have received more in advance than,

If the advance paid to a seaman be found to exceed final settlement be found to

To § 99 N. It is in the Norwegian maritime trade a general custom that seamen who at their departure leave near relatives behind, obtain from the master a so-called draft or drawing certificate for them, i. e. the relatives obtain an order on part of the sailor's salary, which must be drawn monthly at the shipowner's place of business or at the office of a commission agent resident at the place in question.

## Dansk Text.

Afregningen findes at tilkomme ham i Hyre, kan dog ingen Del af Forskudet fordres tilbagebetalt, naar Tilfældet gaar ind under §§ 86—88, 90, 3dje Stykke, eller 91—93.

100. Er nogen af Mandskabet misfornøjet med Skipperens Afregning, kan han fordrer denne prøvet af den Myndighed, der foretager Afmonstringen.

Opstaar der ellers, medens Skibet befinder sig i Udlandet, Tvist mellem Skipperen og nogen af Mandskabet angaaende Tjenesteforholdet, skal Sagen forelægges for Konsulen paa Stedet eller paa det første Anbudssted, hvor dansk Konsul findes.

Konsulens Afgørelse bliver foreløbig bindende for Parterne, indtil Sagen kan indbringes for Retten her i Riget.

101. Naar nogen af Skibsmandskabet nægter at efterkomme en Befaling, eller viser Gjenstridighed i Tjenesten, kan Skipperen eller den, som i hans Fraværelse eller Forfald er den befalende, skaffe sig Lydighed ved Anvendelse af Magt. Naar Skibet er stedt i Fare, eller der viser sig Mytteri blandt Mandskabet, eller naar Nød i øvrigt kræver det, er det tilladt at anvende ethvert til Ordens og Lydigheds Tilvejebringelse nødvendigt Middel, og enhver af Skibsfolkene er endog uden Opfordring forpligtet til at yde den befalende Bistand.

Faar den, som nægtede Lydighed, derved Skade, skal derfor intet Ansvar kunne gøres gjældende, for saa vidt den befalende ikke har brugt haardere Midler, end Omstændighederne krævede.

102. Gör nogen af Skibsmandskabet sig skyldig i nederanførte Tjenesteforseelelser eller Brud paa Skik og Orden, kan han af Skipperen anses med Straf, bestaaende i Tab af Hyre:

## Norsk Text.

ved Afregningen findes at tilkomme ham i Hyre, kan dog ingen Del af Forskuddet fordres tilbagebetalt, naar Tilfældet gaar ind under §§ 86—88, 90, 3dje Stykke, eller 91—93.

100. Er nogen af Mandskabet misfornøjet med Skibsførerens Afregning, kan han fordrer denne prøvet af den Myndighed der foretager Afmonstringen.

Opstaar der ellers, medens Skibet befinder sig i Udlandet, Tvist mellem Skibsføreren og nogen af Mandskabet angaaende Tjenesteforholdet, skal Sagen forelægges for Konsulen paa Stedet eller paa det første Anbudssted, hvor norsk Konsul findes.

Konsulens Afgjørelse bliver foreløbig bindende for Parterne, indtil Sagen kan indbringes for Retten her i Riget.

101. Naar nogen af Skibsmandskabet nægter at efterkomme en Befaling eller viser Gjenstridighed i Tjenesten, kan Skibsføreren eller den, som i hans Fravær eller Forfald er den Befalende, skaffe sig Lydighed ved Anvendelse af Magt. Naar Skibet er stedt i Fare, eller der viser sig Mytteri blandt Mandskabet, eller naar Nød iøvrigt kræver det, er det tilladt at anvende ethvert til Ordens og Lydigheds Tilvejebringelse nødvendigt Middel, og enhver af Skibsfolkene er endog uden Opfordring forpligtet til at yde den Befalende Bistand.

Faar den, som nægtede Lydighed, derved Skade, skal derfor intet Ansvar kunne gøres gjældende, forsaavidt den Befalende ikke har brugt haardere Midler, end Omstændighederne krævede.

102. Gör nogen af Mandskabet sig skyldig i nederanførte Tjenesteforseelelser eller Brud paa Skik og Orden, kan han af Skibsføreren straffes med Tab af Hyre:

## Svensk text.

mer, än rätteligen tillkom honom i hyra, behålle han ändå hvad han uppburit, der tjänstgöringen uppbrött af sådan anledning, som i 86, 87, 88 §, 90 § tredje stycket, 91, 92 eller 93 § omförmåles.

100. Åtnöjes sjöman icke med den afräkning, befälhafvaren för afmonstring upprättat, ege han åska mönstringsförrättarens pröfning af dess rigtighet.

Uppstår, medan fartyget befinner sig å ort ntom riket, tvist mellan befälhafvare och någon af besättningen angående tjänsteförhållandet, skall tvisten hänskjutas till afgörande af svenske konsuln på stället eller, om sådan tjänsteman der icke finnes, den svenske konsul, som derefter under resan först anträffas.

Mönstringsförrättarens eller konsulns beslut skall lända till efterrättelse intill dess saken kan komma under pröfning vid domstol här i riket.

101. Vägrar sjöman att hörsamma gifven befallning eller är eljest motvillig i tjesten, ege befälhafvaren eller, vid hans frånvaro eller förfall, den, som i hans ställe förer befälet, medelst tvång skaffa sig lydnad. När fartyget är stadt i fara eller myteri visar sig bland besättningen eller eljest, när nöden kräfver, ege befälhafvaren bruka allt det våld, som för framtvingande af lydnad eller återställande af ordningen är nödvändigt; och åligger enhver af besättningen att i ty fall, jemväl utan särskild anmaning, lemna befälhafvaren nödigt bistånd.

Får den, som vägrade lydnad, skada, vare gerningsmannen saklös, der ej pröfvas, att större våld brukats, än nöden kräfde.

102. Gör någon af besättningen sig skyldig till förseelse af den art, här nedan sägs, må befälhafvaren ålägga den felande bestraffning genom mistning af hyra



## Danish Text.

on the settlement of accounts, is found to be due to him, no portion of the advance can be reclaimed, when the case comes under §§ 86—88, 90, Section 3, or §§ 91—93.

**100.** Should any of the crew be discontented with the master's settling of accounts, he can demand it examined by the officer authorizing the discharge.

If, otherwise, whilst the ship is in a foreign land, dispute arises between the master and any of the crew respecting matters of service, the matter shall be laid before the Consul at that place, or in the first place at which the ship calls where a Danish Consul is appointed.

The Consul's decision shall, for the time being, be binding for both parties, until the matter can be brought before a Danish Court of Justice.

**101.** Should any of the crew refuse to comply with a command, or show obstinacy in the service, the master or anybody in command in his stead, the master being absent or prevented, can obtain obedience by employing force. When the ship is in danger, or if signs of mutiny appear amongst the crew, or if it otherwise becomes urgent, it is permitted to employ every necessary means for the restoration of order and obedience, and all the seamen are bound, even without being requested to do so, to render the person in command assistance.

Should the person who has refused obedience receive any injury, he cannot call those in command to account for it, provided the latter have not used more stringent means than the circumstances demanded.

**102.** Should any of the crew be guilty of any of the undermentioned breaches of duty or of discipline, penalties may be inflicted on him by the master, consisting in forfeiture of wages according to the following scale, viz.:

## Norwegian Text.

the amount of wages due to him on his discharge, no part of the sum advanced can be recovered in the cases mentioned in §§ 86, 88, 90 3rd part, or §§ 91 to 93.

**100.** If a seaman is dissatisfied with the settlement of his account as made out by the master, he may demand that the dispute shall be decided by the discharging Officer.

If, otherwise, any dispute relating to ship-service should arise between the master and a seaman while the ship is abroad, the case shall be submitted to the decision of the Consul appointed at the place, or at the first place where there is a Norwegian Consul.

The decision of the Consul shall be temporarily binding on the parties, until the case can be brought before a Norwegian Court of Justice.

**101.** If any member of the crew is guilty of disobedience of orders, or if he is refractory in the service of the ship, the master, or the person who commands in his absence, shall be entitled to employ force in order to enforce obedience. If the ship is placed in danger, or in the event of mutiny among the crew, or when otherwise compelled by necessity, it shall be lawful to employ every means whatsoever that may be necessary to enforce discipline or obedience, and every member of the crew, even without being called upon to do so, is bound to render assistance to the officer in command.

If the person who refused obedience has, in such a case, received injury, no liability shall on that account be incurred, provided the officer in command has not employed harsher measures than those required by the circumstances.

**102.** If a seaman is guilty of the undermentioned breaches of duty, or of any breach of conduct or discipline, he may be punished by the master by deductions of pay as follows:

## Swedish Text.

have received in advance more than is due to him as wages, he shall nevertheless keep what he has so received, in cases where his service has ceased from any of the reasons mentioned in Arts. 86, 87 and 88, Art. 90 sect. 3 and Arts. 91, 92 and 93.

**100.** If a seaman is dissatisfied with the account of wages made up by the master for his discharge, he has the right to request the officer performing the discharge to verify its correctness.

Disputes between the master and any of the crew on matters regarding the service shall be referred, when the ship is in foreign ports, to the Swedish Consul of the place, or, should there be no such officer, to the first Swedish Consul met with during the voyage.

The shipping master's or Consul's decision shall hold good until the matter can be laid before a Swedish Court of Justice.

**101.** If a seaman refuses to obey orders, or is otherwise unwilling in the service, the master or any person in command in his stead, if the master is absent or prevented, shall have the right to make themselves obeyed by force. When the ship is in danger, or if signs of mutiny appear amongst the crew, or if it in any other way becomes urgent, the master shall have power to use such force as may be necessary to make himself obeyed or to re-establish order on board, and it shall be the duty of every member of the crew on similar occasions, even without being requested to do so, to render the master all necessary assistance.

Should the person refusing obedience suffer injury, the doer shall be blameless unless it be proved that more force was used than circumstances rendered necessary.

**102.** The following punishment, by way of forfeiture of wages, may be imposed by the master for offences of any of the characters mentioned below committed by any of the crew, to wit:

## Dansk Text.

## Norsk Text.

## Svensk text.

1. For indtil  $\frac{1}{2}$  Maaned: den, som forlader sin Post ved Roret eller paa Udkik, eller paa saadan Post findes sovende eller beruset, eller som viser Uagtsomhed med Ild eller Lys, saa og den, som opfører sig usømmelig mod sine foresatte, eller som viser Ulydighed i Tjenesten;
2. For indtil  $\frac{1}{4}$  Maaned: den, som forsømmer sin Vagt eller ham paalagt Tjeneste eller i samme findes sovende eller beruset, eller som hemmelig skaffer Brændevin eller anden berusende Drik om Bord, eller som uden Tilladelse fører sit Toj fra Borde;
3. For indtil  $\frac{1}{4}$  Maaned: den, som uden Tilladelse gaar i Land, hvis han vender tilbage samme Dag, men for indtil  $\frac{1}{2}$  Maaned, hvis han kommer senere;
4. For 1 eller 2 Dage: den, som efter erholdt Landlov ikke kommer tilbage i rette Tid, hvis han dog kommer samme Dag, men for indtil  $\frac{1}{4}$  Maaned, hvis han kommer senere.
5. For indtil 4 Dage: den, som uden Tilladelse forlader Baad, hvormed han er sendt i Land, eller som ypper Klammeri eller anden Ufred om Bord eller i øvrigt i Tjenesten uden Tilladelse lader uvedkommende Personer komme om Bord eller holde sig skjult i Skibet, eller paa anden Maade gør Brud paa Skik og Orden.
1. For indtil  $\frac{1}{2}$  Maaned: dersom han forlader sin Post ved Roret eller paa Udkik, eller paa saadan Post findes sovende eller beruset, eller viser Uagtsomhed med Ild eller Lys, opfører sig usømmeligt mod sine Foresatte, eller viser Ulydighed i Tjenesten;
2. For indtil  $\frac{1}{4}$  Maaned: dersom han forsømmer sin Vagt eller ham paalagt Tjeneste, eller i samme findes sovende eller beruset, eller hemmelig skaffer Brændvin eller anden berusende Drik ombord, eller uden Tilladelse fører sit Toi fraborde;
3. For indtil  $\frac{1}{4}$  Maaned: dersom han uden Tilladelse gaar i Land, men dog vender tilbage samme Dag, men for indtil  $\frac{1}{2}$  Maaned, hvis han kommer senere;
4. For 1 eller 2 Dage: dersom han efter erholdt Landlov ikke kommer tilbage i rette Tid, men dog kommer samme Dag, men for indtil  $\frac{1}{4}$  Maaned, hvis han kommer senere;
5. For indtil 4 Dage: dersom han uden Tilladelse forlader Baad, hvormed han er sendt iland, eller dersom han ypper Klammeri eller anden Ufred ombord eller iøvrigt i Tjenesten, uden Tilladelse lader uvedkommende Personer komme ombord eller holde sig skult i Skibet, eller paa anden Maade gjør Brud paa Skik og Orden.
1. För högst en half månad: om någon öfvergifver sin post vid rodret eller på utkik eller å sådan post finnes sofvande eller drucken, eller om någon visar oaktsamhet om elden eller uppför sig oskielikt mot förman eller visar olydnad i tjensten;
2. För högst en fjerdedels månad: om någon försummar sin vakt eller annan honom ålagd tjenst, derunder finnes sofvande eller drucken, eller om någon hemligen skaffar bränvin eller andra rusdrycker ombord eller utan lof förer sina tillhörigheter från bord;
3. För högst en fjerdedels månad: om någon utan tillstånd går i land, så vida han återvänder samma dag, men för högst en half månad, om han kommer senare;
4. För en eller två dagar: om någon efter erhållet tillstånd gått i land men icke återkommer i rätt tid, så vida han dock kommer å utsatt dag, men för högst en fjerdedels månad, om han kommer senare;
5. För högst fyra dagar: om någon utan tillstånd lemnar farkost, hvarmed han blifvit sänd i land, yppar gräl eller annan ofred ombord eller eljest i tjensten, ntan tillstånd låter obehörig person komma ombord eller hålla sig dold å fartyget eller anordledes bryter mot ordning och skiek.

Er den skyldige Styrmand eller Maskinmester, bøder han dobbelt mod anden Sømand.

Er den Skyldige Styrmand eller Maskinmester, bøder han dobbelt mod anden Sjømand.

Är den felande styrman eller maskinist, må honom åläggas mistning af hyra för högst dubbelt så lång tid, som annan sjöman.

Gør nogen, der en Gang er straffet, sig paa ny skyldig i den samme Forseelse, kune Boderne forhoies til det dobbelte.

Gjør nogen, der engang er straffet, sig paany skyldig i samme Forseelse, kan Boderne forhoies til det dobbelte.

Begår någon, efter det bestraffning ålagts honom, ånyo enahanda förseelse, må bestraffningen skärpas till mistning af hyra för dubbelt så lång tid, som ofvan sagts.

Ej maa dog paa Grund af saaledes paalagt Straf indeholdes mere end Halvdelen af det Hyrebeløb, som den skyldige ved Afmonstringen findes at have fortjent paa Rejsen.

Dog maa ikke paa Grund af saaledes paalagt Straf indeholdes mere end Fjerdedelen af det Hyrebeløb, som den Skyldige ved Afmonstringen findes at have fortjent paa Reisen.

Ej må på grund af sålunda ålagd bestraffning innehållas mer, än hälften af det hyresbelopp, som vid skeende afräkning finnes vara af den felande förtjent under resan.

## Danish Text.

1. Not exceeding half a month: If the man leaves his post at the helm or on the look-out, or is found asleep or drunk on such post, or if he shows carelessness with fire or light, as well as if he behaves disrespectfully towards his superior officers or shows disobedience in the service;
2. Not exceeding a quarter of a month: If anybody neglects his watch or any work imposed upon him, or on such occasion is found asleep or drunk, or secretly brings brandy or other intoxicating liquors on board, or without permission takes his effects ashore;
3. Not exceeding a quarter of a month: If he without permission goes on shore, if he comes back the same day; and not exceeding half a month, if he returns later;
4. One or two days: If the man, after having received permission to go ashore, does not return in due time, if he comes back the same day; and not exceeding a quarter of a month, if he comes later;
5. Not exceeding four days: If the seaman, who, without permission, leaves the boat with which he is sent ashore, or causes quarrel or other disturbance on board, or otherwise, whilst on duty, permits strangers to come on board or to hide themselves there, or in any other manner commits a breach of order and discipline.

Should the offender be a mate or an engineer, he pays the double penalty of that of a sailor.

Should anybody, who has been punished once, commit the same offence again, the fines may be increased until they are doubled.

Nevertheless, on the ground of punishment thus inflicted, not more than half of the wages which the offender on discharge is found to have earned during the voyage, can be withheld.

## Norwegian Text.

1. For leaving his post at the wheel or on the look-out or being found asleep or intoxicated on such post, or imprudently handling fire or light, or treating his superiors with insolence, or for disobedience in the service; a deduction not exceeding half a month's wages;
2. For absenting himself from his watch or other service imposed upon him, or being found asleep or intoxicated while in the service of the ship, or secretly bringing spirits or other intoxicating liquors on board, or removing his effects from the ship without permission; a deduction not exceeding a quarter of a month's wages;
3. For going on shore without permission, if he returns on the same day; a deduction not exceeding wages for a quarter of a month, but up to half a month, if he returns later;
4. For not returning in proper time after having obtained leave; a deduction not exceeding wages for 1 or 2 days, if he returns on the same day, but up to a quarter of a month, if later;
5. For leaving, without permission, a boat in which he has been sent on shore, or for raising a quarrel or other disturbance on board, or otherwise while in the service of the ship, for admitting or concealing strangers on board without permission, or for other breaches of conduct or discipline; a deduction not exceeding 4 days' wages.

If the offender is a mate or engineer, the amount of the fine shall be doubled.

If a seaman, after having once been punished is again guilty of the same offence, the penalties may be increased up to double the amounts specified above.

In no case, however, must the deduction made in any such instances exceed one fourth of the amount due to the seaman on his discharge, and earned during the voyage.

## Swedish Text.

1. Not exceeding half a month: if any one deserts his post at the wheel, or leaves the lookout, or is found asleep or drunk at such post, or if any one shows carelessness respecting fire, or behaves disrespectfully towards any of his superiors, or is disobedient in the service;
2. Not exceeding a quarter of a month: if any of the crew misses his watch or any other work given to him, or is found asleep or drunk in the service, or if any one secretly brings brandy or other intoxicating liquors on board, or without permission takes away his effects from the ship;
3. Not exceeding a quarter of a month: if any one goes on shore without permission, provided he returns the same day; and not exceeding half a month if he returns later;
4. One or two days: if any of the crew goes on shore having obtained permission and returns on the day appointed but not in proper time, and not exceeding a quarter of a month if he returns later than the day appointed;
5. Not exceeding four days: if any of the crew without permission leaves the boat or other vessel by which he has been sent on shore, causes quarrel or other disturbance on board or otherwise in the service, or allows strangers to come on board or to conceal themselves in the ship, without permission, or otherwise commits any breach of order and discipline.

Should the offender be a mate or engineer, he may incur the forfeiture of wages for any term not exceeding twice the time stipulated for seamen.

Any one repeating an offence for which he has already been punished, shall incur the forfeiture of wages for double the term aforesaid.

The amount of forfeitures incurred as aforesaid may never exceed half the amount of the wages which, at the final settlement, are found to have been earned by the offender during the voyage.

Er denne Grænse naaet, har Skipperen Ret til at anvende Arrest, dog ikke for længere Tid end 48 Timer, og kun for saa vidt passende Arrestrum haves om Bord.

103. Inden Skipperen udover den ham efter § 102 tilkommende Straffemyndighed, skal han i Nærværelse af to af de bedste Mænd om Bord optage Forhør over den, som har begaaet Forseelsen, dog ikke førend 12 Timer ere forløbne, siden denne fandt Sted, medmindre der maatte være særlig Grund til at holde Forhøret tidligere. Hvad derved fremkommer, ligesom ogsaa den Straf, som Skipperen paalægger, bør indføres i Dagbogen, hvis saadan føres om Bord, og ellers skriftlig optegnes, det tilforte eller nedskrevne oplæses for den skyldige og Vidnerne, og dets Rigtighed bekræftes ved de tilstedeværendes Underskrift. — Har Skipperen ikke iagttaget disse Forskrifter, er Beslutningen om Afkortning i Hyre uden Virkning.

104. Vil den, som af Skipperen er straffet med Tab af Hyre, klage herover, maa han indgive sin Klage til Retten inden 3 Dage efter, at Skibet er ankommet til indenlandsk Havn, hvor det skal losse, lade eller oplægges, og hvor det bliver liggende mindst en Tid som nævnt. Finder Afmonstring Sted, regnes Fristen fra denne. Skipperen maa ikke nægte ham Landlov for at klage.

Er denne Grænse naaet, har Skibsføreren Ret til at anvende Arrest, dog ikke for længere Tid end 48 Timer.

103. Inden Skibsføreren udover den ham efter § 102 tilkommende Straffemyndighed, skal han i Nærvær af to af de bedste Mænd ombord optage Forhør over den, som har begaaet Forseelsen, dog ikke, førend 12 Timer er forløbne, siden denne fandt Sted, medmindre der maatte være særlig Grund til at holde Forhøret tidligere. Hvad derved fremkommer, ligesom ogsaa den Straf, som Skibsføreren paalægger, bør indføres i Dagbogen, hvis saadan føres ombord, og ellers skriftlig optegnes, det Tilforte eller Nedskrevne oplæses for de Skyldige og Vidnerne, og dets Rigtighed bekræftes ved de Tilstedeværendes Underskrift. Har Skibsføreren ikke iagttaget disse Forskrifter, er Beslutningen om Afkortning i Hyren uden Virkning.

Paa samme Maade som ovenfor bestemt forholdes, saafremt Skibsføreren, istedetfor at ilægge Straf, vil forbeholde Tiltale efter § 308 for den begaaede

Retten til at ilægge Straf eller forbeholde Tiltale bortfalder, naar en Uge er hengaaet, siden Forseelsen fandt Sted.

Ilagt Straf kan inden Afmonstringen helt eller delvis eftergives af Skibsføreren. Eftergivelsen maa, forat være gyldig, indføres i Dagbogen eller i Tilfælde paa anden Maade optegnes samt bekræftes ved to Mænds Underskrift.

104. Vil den, som af Skibsføreren er straffet med Tab af Hyre, klage herover, maa han indgive sin Klage til Retten inden 3 Dage efterat Skibet er ankommet til indenlandsk Havn, hvor det skal losse, laste eller oplægges, og hvor det bliver liggende mindst en Tid som nævnt. Finder Afmonstring Sted, regnes Fristen fra denne. Skibsføreren maa ikke nægte ham Landlov for at klage.

I stället för mistning af hyra må i fall, som här äro nämnda, befälhafvaren ålägga den felaktige arrest, dock ej för längre tid, än fyratioåtta timmar hvarje gång.

103. Innan befälhafvare utöfvar den rätt att straffa, som enligt 102 § tillkommer honom, skall han, i närvaro af två de bästa männen ombord, anställa förhör med den, hvilken förseelsen tillvitas, dock icke förrän tolf timmar förflutit efter det förseelsen begicks, der ej särskild anledning förekommer att tidigare företaga förhöret. Hvad vid förhöret förekommer skall skriftligen upptecknas, så ock hvilken bestraffning befälhafvaren ålägger, och det antecknade, sedan det blifvit för den felaktige och vittnena uppläst, till riktigheten bestyrkas genom de närvarandes underskrift; föres dagbok, skall anteckningen ske i denna.

Har befälhafvaren icke iakttagit hvad sålunda är föreskrifvet, vare beslut om mistning af hyra utan verkan.

Förseelse.

104. Nöjes ej sjöman åt beslut, hvarigenom befälhafvaren ålagt honom mistning af hyra, gifve han det till kända vid afmonstringen eller vare sin talan qvitt.

Anmäles missnöje, skall mönstringsförrättaren undersöka, huru vida vid bestraffningens åläggande så förfarits, som i 103 § är föreskrifvet, så ock, der berörda förfarande iakttagits, huru vida bestraffningen må anses vara laglig och skälig, samt deröfver meddela beslut; ock ege sedan den, som med beslutet icke åtnöjes, tid af ett år från afmonstringen att vid domstol här i riket utföra sin talan.

## Danish Text.

Should this limit be reached, the master has a right to place the offender under arrest; but not for a longer period than 48 hours, and only in case the vessel contains a suitable detention room.

**103.** Previous to exercising the authority of punishing, assigned to him under § 102, the master shall, in the presence of two of the best men on board, hold an examination over the person who has committed the fault, not, however, till twelve hours have elapsed since the misconduct has been committed, unless there be special reason for holding the examination earlier. Whatever is stated there, together with the punishment the master inflicts, should be entered in the logbook, if such is kept on board, and otherwise be recorded in writing; what is entered or written down shall be read before the guilty and the witnesses, and its correctness be attested by the signatures of those present. Should the master not have observed these instructions, the decision with reference to the deduction in the wages is of no effect.

## Norwegian Text.

If the said limit is reached, it shall be lawful for the master to imprison the seaman for a period not exceeding 48 hours.

**103.** Before making use of his right to inflict penalties according to § 102, the master shall, in the presence of two of the chief men on board, examine the offender, but, if not otherwise specially required by circumstances, not before the expiry of 12 hours after the commission of the offence. An entry of the investigation, and of the penalty inflicted by the master, ought to be made in the log-book if one is kept on board, or otherwise in writing, and be read aloud to the guilty party and the witnesses, and the correctness thereof be attested by the signatures of all parties present. If the prescriptions of this paragraph are not complied with by the master, his decision in respect to any deduction from the wages of a seaman shall be void.

The same rule shall apply if the master, instead of inflicting punishment, desires to reserve to himself the right of having the seaman prosecuted for in accordance with § 308.

The right of the master to reserve his right to have an offence void on the expiry of the offence was committed.

Any punishment imposed on a seaman may be partially or entirely remitted by the charge of the seaman. Such effect, must be entered in the manner be recorded in writing and attested by the signatures of two men.

**104.** If the seaman, whom the master has punished with forfeiture of wages, wishes to complain of this, he must lodge his complaint within three days after the ship's arrival at a Danish port, where it is to discharge cargo, or to load, or to be laid up, and where it remains at least for the time mentioned. Should discharge take place, the respite is reckoned from that time. The master must not refuse him leave to go ashore to complain.

**104.** Any seaman desirous of complaining of the punishment by loss of pay inflicted on him by the master, must send in his complaint to the Court within the expiry of 3 days after the arrival of the ship at a Norwegian port for the purpose of discharging, loading, or lying up, and at which it will remain for at least the above-mentioned period. If the discharge of the seaman takes place, the term of grace shall be reckoned from the date thereof. The master shall not refuse to grant him permission to go ashore for the purpose of making his complaint.

## Swedish Text.

In lieu of forfeiture of wages in the cases abovementioned, the master can arrest the offender for a term, not however exceeding forty-eight hours for each time.

**103.** Previous to exercising the right to punish given the master in accordance with Art. 102, he shall examine the person accused of the offence in the presence of two of the best men on board; such examination is, however, not to take place before the lapse of twelve hours subsequent to the commission of the offence, unless special reason exists for examining earlier. The particulars of such examination shall be recorded in writing, as well as the punishment imposed by the master, whereupon the record, having been read to the offender and the witnesses, shall be certified to be correct by the respective signatures of those present. If a logbook is kept the record shall be entered therein.

No decision as to forfeiture of wages shall have any effect, should the master have failed to comply with the above prescriptions.

the offence by the Authorities,

inflict a punishment, or to offender prosecuted, shall become void after the date when

on a seaman may be partially master previous to the remission, in order to have log-book, or in some other and attested by the signatures

**104.** Should the seaman be dissatisfied with the decision by which the master has imposed forfeiture of wages, he shall give notice at the time of the discharge or lose his right of pleading.

In case of complaint, the officer who effects the discharge shall investigate whether the regulations given in Art. 103 were observed when the punishment was imposed, and also, should the said rules have been properly observed, whether the punishment ought to be considered lawful and reasonable, and decide accordingly; any person dissatisfied with the decision shall have the right, within a year from

Afskediges Somanen i fremmed Havn, har han at fremføre sin Klage for den danske Konsul paa Stedet, hvis Afgørelse foreløbig bliver at lægge til Grund ved Afregningen. Det staar derefter saavel Skipperen som Somanen aabent, inden 1 Aars Forlob at indbringe Sagen for Retten paa Skibets Hjemsted, for hvilken Somanen ligeledes inden 1 Aar efter Afskedigelsen kan paaklage Skipperens Kendelse og Afregning, naar der ikke var dansk Konsul paa det Sted i Udlandet, hvor han er bleven afskediget. Somanen er berettiget til at faa Afskrift af, hvad der i Medfør af § 103 er tilført Dagbogen, eller paa anden Maade optegnet, angaaende den ham paalagte Straf.

De i denne Paragraf omhandlede Retssager blive at behandle som private Politisager, i København ved So- og Handelsretten, uden for København ved Soretterne.

105. Hyre, som indeholdes efter § 102, kan af Skipperen anvendes til Erstatning for Udgifter og Skade, som den Skyldige under Rejsen har forvoldt Rederiet, for saa vidt Somanens tilgodehavende Hyre ikke dertil er tilstrækkelig. Hvad derefter maatte være i Behold, tilfalder en i Søfartens eller de søfarendes Interesse indstiftet Indretning efter Kongens nærmere Bestemmelse; det udbetales ved Afmonstringen til Monstringsbestyrerne, i Udlandet til Konsulen, eller indsendes af Skipperen til vedkommende Indretning, naar Somanen fratræder Tjenesten uden Afmonstring.

106. Den, som rommer uden frivillig at vende tilbage for Skibets Afgang, forbryder sin tilgodehavende Hyre og sine om Bord efterladte Ejendele til Rederiet; bliver dette ikke derved skadesløst for det ved Rømningen forvoldte Tab, er han pligtig at erstatte det manglende. For den Tid, en Soman uden Tilladelse er borte fra Skibet, tilkommer der ham ikke Hyre.

Afskediges Sjømanden i fremmed Havn, har han at fremføre sin Klage for den norske Konsul paa Stedet, hvis Afgørelse foreløbig bliver at lægge til Grund ved Afregningen. Det staar derefter saavel Skibsføreren som Sjømanden aabent inden et Aars Forlob at indbringe Sagen for Retten paa Skibets Hjemsted, hvor hvilken Sjømanden ligeledes inden et Aar efter Afskedigelsen kan paaklage Skibsførerens Kjenndelse og Afregning, naar der ikke var norsk Konsul paa det Sted i Udlandet, hvor han er bleven afskediget. Sjømanden er berettiget til at faa Afskrift af, hvad der i Medfør af § 103 er tilført Dagbogen eller paa anden Maade optegnet angaaende den ham paalagte Straf.

105. Hyre, som indeholdes efter § 102, kan af Skibsføreren anvendes til Erstatning for Udgifter og Skade, som den Skyldige under Rejsen har forvoldt Rederiet, forsaavidt Anførsel derom er gjort i Dagbogen, og Sjømandens tilgodehavende Hyre ikke er tilstrækkelig til at dække Kravet. Hvad derefter maatte være i Behold, tilfalder en i Sjøfartens eller de Søfarendes Interesse indstiftet Indretning efter Kongens nærmere Bestemmelse; det udbetales ved Afmonstringen til Monstringsbestyreren, i Udlandet til Konsulen, eller indsendes af Skibsføreren til vedkommende Indretning, naar Sjømanden fratræder Tjenesten uden Afmonstring.

106. Den, som rommer uden frivillig at vende tilbage for Skibets Afgang, skal have sin tilgodehavende Hyre og sine ombord efterladte Eiendele forbrudt til Rederiet.

For den Tid, en Sjømand uden Tilladelse er borte fra Skibet, tilkommer der ham ikke Hyre.

Lemnar sjömannen fartyget utan afmönstring, skall han, der han vill klaga öfver sådan bestraffning, taga stämning å redaren eller befälhafvaren till domstol här i riket inom ett år efter det han lemnade tjänsten, eller vare sin talan qvitt.

Afskrift af hvad jemlikt 103 § antecknats angående den ålagda bestraffningen skall på begäran meddelas sjömannen.

105. Hyra, som enligt 102 § på grund af ålagd bestraffning frångår sjöman, tillfalle sjömanshuset i fartygets hemort, dock med afdrag af hvad till ersättande af kostnad och skada, som den felande under resan må hafva tillskyndat redaren, erfordras utöfver sjömannens innestående hyresfordran. Det sjömanshuset tillkommande belopp skall vid afmönstringen öfverlemnas till mönstringsför rättaren eller, der sjömannen utan afmönstring lemnar fartyget, af befälhafvaren redovisas till sjömanshuset.

106. Rymmer sjöman och vänder han ej frivilligt tillbaka före fartygets afgang från den ort, der rymningen skedde, vare hans innestående hyra äfvensom de tillhörigheter, han kvarlemnadt ombord, förbrutna till redaren. Förslår det ej till betäckande af den förlust, som genom rymningen tillskyndas redaren, ege denne hos den brottslige utsöka bristen.

## Danish Text.

Should a seaman be discharged in a foreign port, he shall lay his complaint before the Danish Consul in that place, by whose decision for the time being the accounts shall be settled. It is open, however, both to the master and to the seaman, before the lapse of a year to lay the matter before the Court at the vessel's port of registry, for which the seaman also, within one year after the discharge, can appeal against the master's decision and settlement of accounts, if there was no Danish Consul in the place where he was discharged. The seaman has a right to obtain a copy of what, in accordance with § 103, is entered in the logbook or otherwise recorded concerning the punishment inflicted on him.

The lawsuits mentioned in this paragraph are dealt with as private police-cases, in Copenhagen under the Maritime and Commercial Court, outside of Copenhagen under the maritime courts.

**105.** Wages which are withheld according to § 102, can by the master be employed to reimburse expenses and damage which the offender during the voyage has caused the ship-owners, in so far as the wages due to the seaman are not sufficient for that. What remains shall fall to the lot of an institution organized for the benefit of the navigation and the seafarers according to the King's further decision; it shall be paid out on discharge to the registrar of shipping, in foreign country to the Consul, or it shall be sent by the master to the institution in question, whenever a seaman leaves the service without discharge.

**106.** The seaman who deserts, and does not of his own free will return before the ship's departure, forfeits to the owners the wages due to him, as well as all the effects he has left behind on board; should this not be sufficient to meet the loss sustained by the owners on account of the desertion, he is bound to reimburse what is wanting. For the time that a seaman is

## Norwegian Text.

If the seaman is discharged in a foreign port, he ought to make his complaint to the Norwegian Consul, who shall temporarily decide as to the amount of wages to be paid to the seaman. It then remains open to the master or seaman, within the expiry of one year, to lay the matter for settlement before the Court at the place to which the vessel belongs, but, provided there was not a Norwegian Consul at the place abroad at which he was dismissed, the seaman may, likewise, within the space of one year after his dismissal, lodge a complaint against the master's decision and settlement of accounts before the said Court for judgment. The seaman shall be entitled to a copy of the entries made, in accordance with § 103, in the log-book or otherwise, in respect to the penalty inflicted upon him.

**105.** Wages withheld in accordance with § 102 may be applied by the master towards covering the expenses and damage caused to the owners by default of the seaman during the voyage, provided an entry thereof has been made in the log-book, and that the amount of wages still due to the seaman is insufficient to cover the costs incurred by reason of such default. Any surplus remaining shall, subject to such provisions as the King may issue, fall to an Institution established for promoting the benefit of the seafaring classes. It shall be paid to the Officer before whom the seaman is discharged, if abroad to the Consul, or, if the seaman leaves the service without being discharged, be forwarded by the master to the Institution named.

**106.** If a seaman is guilty of desertion, without returning voluntarily to the ship before its departure, his outstanding wages and the clothes and effects left by him on board, shall be forfeited for the benefit of the owners.

If a seaman absents himself from the ship without permission, his wages shall be forfeited for the time he has been absent.

## Swedish Text.

the date of discharge, to plead his case before a Swedish Court of Justice.

Should the seaman leave the ship without being discharged and desire to complain of such punishment as aforesaid, he shall summon the owner or master before a Swedish Court of Justice within a year from the date of his leaving the service, otherwise he shall lose his right to plead.

At the request of the seaman, he shall be furnished with a copy of the record made with regard to the punishment imposed in accordance with Art. 103.

**105.** Wages forfeited by seamen on account of punishments, imposed in accordance with Art. 102, shall go to the Mercantile Marine Office of the place to which the ship belongs, with deduction, however, of any amount requisite for the compensation of costs and damage incurred by the owners through the fault of the defendant during the voyage over and above the money actually due to the seaman. The amount due to the Mercantile Marine Office shall, at the time of discharging, be delivered to the officer effecting the discharge, or, should the seaman leave the ship without being discharged, the master shall render account to the Mercantile Marine Office.

**106.** If a seaman deserts and does not of his own free will return before the departure of the ship from the port where the desertion takes place, his unpaid wages and effects left on board shall be forfeited to the owners. If insufficient to cover the loss sustained by the owners on account of the desertion, the latter shall be entitled to sue the offender for the difference.

107. Findes der Grund til Mistanke om, at Romning tilsigtes, kan Skipperen tage Skibsfolkernes Toj under Forvaring, saa længe Forholdene give Lejlighed til at rumme. Dersom nogen af Mandskabet træffes i Færd med at rumme, eller paagribes efter at være romt, er Skipperen berettiget til at holde ham arresteret om Bord eller i Land, indtil Skibet afsejler.

108. Personer, som ere ansatte paa Skibet uden at høre til det egentlige Skibsmandskab ere pligtige at vise Lydighed mod Skipperens Befalinger med Hensyn til Skik og Orden om Bord, samt efter Evne at udføre det Arbejde, som Skipperen finder nødvendigt for Skibets Sikkerhed. De ere underkastede Bestemmelserne i §§ 81, 101, og 102.

For saa vidt de ere antagne af Skipperen eller Rederiet, have de samme Rettigheder som Mandskabet; dog komme de ikke i Betragtning ved Beregningen af det i § 87 omhandlede Flertal.

### Femte Kapitel.

#### Om Befragtning.

109. Ved Befragtning skal der oprettes skriftlig Kontrakt (Certeparti), naar nogen af Parterne begærer det.

110. Befragtning af Skib anses ikke uden særlig Aftale at omfatte Skibets aabne Dæk, heller ikke Kahyt eller andre Rum, som ere bestemte til Opholdssted for Mandskabet eller til Opbevaring af Skibsinventar, Proviant, Brændsel eller andet, som udkræves til Rejsen.

I saadanne Rum eller paa Dæk maa dog ikke uden Befragternes Samtykke medtages Varer for andres Regning; sker det, skal Bortfragteren betale ham gangbar Fragt for Godset og erstatte ham al forvoldt Skade.

107. Findes der Grund til Mistanke om, at Romning tilsigtes, kan Skibsføreren tage Skibsfolkernes Toi under Forvaring, saalænge Forholdene giver Leilighed til at rumme. Dersom nogen af Mandskabet træffes ifærd med at rumme eller paagribes efter at være romt, er Skibsføreren berettiget til at holde ham arresteret ombord eller i Land, indtil Skibet afsejler.

108. Personer, som er ansatte paa Skibet uden at høre til det egentlige Skibsmandskab, er pligtige at vise Lydighed mod Skibsføreres Befalinger med Hensyn til Skik og Orden ombord samt efter Evne at udføre det Arbejde, som Skibsføreren finder nødvendigt for Skibets Sikkerhed. De er underkastede Bestemmelserne i §§ 81, 101 og 102.

Forsaavidt de er antagne af Skibsføreren eller Rederiet, har de samme Rettigheder som Mandskabet; dog kommer de ikke i Betragtning ved Beregningen af det i § 87 omhandlede Flertal.

### Femte Kapitel.

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I saadanne Rum eller paa Dæk maa dog ikke uden Befragternes Samtykke medtages Varer for Andres Regning; sker det, skal Bortfragteren betale ham gangbar Fragt for Godset og erstatte ham al forvoldt Skade.

För den tid, sjöman utan lof är borta från fartyget, utgår ej hyra.

107. Förekommer anledning att rymning tillämnas, må befälhafvaren, så länge faran för rymning fortvarar, hålla besättningens tillhörigheter under särskildt förvar. Beträdes sjöman med försök till rymning eller gripes förrymd sjöman, ege befälhafvaren hålla honom i fängsligt förvar, ombord eller i land, till dess fartyget afseglar.

108. De å fartyget anställda personer, hvilka ej höra till den egentliga besättningen, vare skyldiga att hörsamma befälhafvarens föreskrifter med afseende på ordning och skick ombord äfvensom att förrätta det arbete, befälhafvaren för fartygets säkerhet finner nödigt att ålägga dem. Äro de antagna af redaren eller befälhafvaren, tillkomme dem samma rättigheter, som besättningen.

Hvad i 81, 101 och 102 §§ är stadgad med afseende å besättningen skall ock lända till efterrättelse med afseende å öfriga ombord anställda personer.

### Femte kapitlet.

#### Om befraktning.

109. Slutes aftal angående fraktande af gods, skall derom upprättas skriftlig afhandling (certeparti), så vida någondera parten det äskar.

110. Befraktning af helt fartyg omfattar icke, utan att särskildt förbehåll skett, fartygets öppna däck, icke heller kajuta eller annat rum, som är afsedt för besättningens behof eller till förvaring af skeppsredskap, proviant, bränsle eller annat, som för resan erfordras. Ej må likväl å däcket eller i nyss omförmälda rum utan befraktarens samtycke medtagas handelsvaror för annans räkning; sker det, skall bortfraktaren till befraktaren erlägga frakt för godset samt, efter pröfning af skiljemän, utgifva ersättning för skada och förlust, som i följd af godsets medtagande må för befraktaren uppkomma.



## Danish Text.

absent from the ship without permission, no wages are due to him.

**107.** Should there be reason to suspect that desertion is intended, the master may put the effects of the crew under charge, so long as circumstances afford opportunity to desert. Should any of the crew be found trying to desert, or should he be apprehended after having deserted, the master has a right to keep him arrested on board or ashore, until the ship sails.

**108.** Persons who are engaged on board without belonging to the crew proper, are bound to show obedience to the master's orders with regard to order and discipline, as well as to perform to the best of their ability the work which the master considers necessary for the safety of the ship. The regulations contained in §§ 81, 101 and 102 shall also apply to these persons.

In as far as they are engaged by the master or the ship-owners, they have the same rights as the crew; still, they are not to be reckoned in the calculation of the majority mentioned in § 77.

## Chapter V.

## Of chartering.

**109.** On chartering a written contract (Charterparty) shall be made, if any of the parties should so desire.

**110.** Chartering of a ship is not, without special agreement, considered to include the open deck of the vessel, nor the cabins, nor other places which are intended for quarters for the crew or for storing of ship-stores, provisions, fuel, or other things which may be required for the voyage.

In such places or on deck there must not, however, without the charterer's consent be received goods on other people's account; should this happen, the freighter shall have to pay the charterer current freight for the goods, and to indemnify him for all damage caused thereby.

## Norwegian Text.

**107.** If there is reason to apprehend that desertion is intended, the master may take the effects of the seaman into his custody for such length of time as circumstances admit the possibility of desertion. If any member of the crew is found in the act of deserting, or is seized after having deserted, the master may have him imprisoned ashore or on board until the departure of the ship.

**108.** Any persons employed on board the ship other than those belonging to the crew, shall show obedience to the commands of the master in respect to conduct and discipline on board, and be bound to perform, so far as possible, such work as the master finds necessary for the security of the ship. They shall be subject to the rules of §§ 81, 101 and 102.

If engaged by the master or the owners, they shall have the same rights as the members of the crew, but shall not count in forming the majority required by § 87.

## Chapter V.

## Affreightment.

**109.** In chartering a ship the contract shall be in writing (charter-party) when so required by any of the parties.

**110.** The chartering of a ship shall not, unless otherwise specially stipulated, be considered to include the open decks of the ship, nor the cabin or other spaces appointed for the use of the crew or the storage of ship's stores, provisions, fuel or other necessities for the voyage.

It shall, however, not be lawful to ship any goods on behalf of others than the charterer in such spaces or on the deck without the consent of the charterer. Should this be done the owners shall pay him freight for such goods at current rates, and compensation for all loss or damage which may be occasioned thereby.

## Swedish Text.

No wages are to be paid for the time a seaman absents himself from the ship without leave.

**107.** Should there be reason to suspect that desertion is intended, the master may keep the effects of the crew in special custody so long as there is any danger of desertion. If a seaman is found trying to desert, or if the deserter is apprehended, the master shall have power to imprison him on shore or on board until the ship sails.

**108.** Any person engaged on board, not being a member of the actual crew, shall be bound to observe the prescriptions given by the master with regard to order and discipline on board, and to perform any work which the master considers necessary to charge them with for the safety of the ship. If such persons have been engaged by the owners or the master, they shall enjoy the same rights as the crew.

The enactments contained in Arts. 81, 101 and 102 with reference to the crew shall also apply to any other person or persons employed on board.

## Chapter V.

## Chartering.

**109.** Agreements respecting the carrying of goods shall be made in writing (Charterparty), should any of the parties so desire.

**110.** The chartering of a whole vessel does not include the open decks nor the cabins or other spaces intended for the accommodation of the crew, or for ship's stores, provisions, fuel or other requisites necessary for the voyage, unless specially agreed upon. Except with the consent of the charterer, no goods shall, however, be carried for any other person on deck or in any of the abovementioned spaces. Should goods nevertheless be so carried, the owners of the ship shall have to pay freight to the charterer, together with such compensation for the damage and loss sustained on account of the carrying of the goods, as arbitrators may decide to be right.

111. Er Skibet ikke til Stede paa Lastepladsen og færdigt til at indtage Ladning til den Tid, der er betinget i Befragtningskontrakten, er Befragteren berettiget til at hæve Kontrakten; han har desuden Krav paa Erstatning for den ved Forsinkelsen forvoldte Skade, medmindre det oplyses, at Forsinkelsen ikke kan tilregnes Reder, Skipper eller Mandskab.

Indeholder Befragtningskontrakten ingen Bestemmelse om Tid for Indladningens Begyndelse, maa Befragteren finde sig i Ophold, medmindre det oplyses, at Forsinkelsen kan tilregnes Reder, Skipper eller Mandskab.

Hvis Befragteren i noget Tilfælde vil gøre Krav paa Erstatning, uagtet Kontrakten ikke hæves, maa han derom tage Forbehold, inden han begynder at levere Ladning.

112. Befragteren kan overdrage sin Ret efter Befragtningskontrakten til en anden, men vedbliver ikke desto mindre at være ansvarlig for Opfyldelsen af de Forpligtelser, som Fragtkontrakten medfører for ham.

113. Uden Befragterens Samtykke maa hans Gods ikke forsendes med andet Skib end det, som Kontrakten angaar, medmindre Omladning foranlediges ved saadant Nødtilfælde, som omhandles i §§ 160 og 161. Handles derimod, har Befragteren Krav paa Erstatning for al deraf flydende Skade.

114. Er der ikke vedtaget nogen bestemt Lasteplads i Havnen, kan Befragter af helt Skib fordre, at Skibet henlægges til den Plads, som han anviser, for saa vidt Adgangen dertil er aaben, og Skibet der kan ligge flot og sikkert samt uden Minder kan komme ud derfra med indtagen Last; saadan Anvisning maa dog gives ufortøvet efter Skipperens Opfordring, da Skipperen i andet Fald har Ret til at vælge Pladsen, dog kun en Plads, som er

111. Er Skibet ikke tilstede paa Lastepladsen og færdigt til at indtage Ladning til den Tid, der er betinget i Befragtningskontrakten, er Befragteren berettiget til at hæve Kontrakten; han har desuden Krav paa Erstatning for den ved Forsinkelsen voldte Skade, medmindre det oplyses, at Forsinkelsen ikke kan tilregnes Reder eller Skibsfører.

Indeholder Befragtningskontrakten ingen Bestemmelse om Tid for Indladningens Begyndelse, maa Befragteren finde sig i Ophold, medmindre det oplyses, at Forsinkelsen kan tilregnes Reder eller Skibsfører.

Hvis Befragteren i noget Tilfælde vil gjøre Krav paa Erstatning, uagtet Kontrakten ikke hæves, maa han tage Forbehold derom, inden han begynder at levere Ladning.

112. Befragteren kan overdrage sin Ret efter Befragtningskontrakten til en Anden, men vedbliver ikke destomindre at være ansvarlig for Opfyldelsen af de Forpligtelser, som Fragtkontrakten medfører for ham.

113. Uden Befragterens Samtykke maa hans Gods ikke forsendes med andet Skib end det, som Kontrakten angaar, medmindre Omladning foranlediges ved saadant Nødtilfælde, som omhandles i §§ 160 og 161. Handles derimod, har Befragteren Krav paa Erstatning for al deraf flydende Skade.

114. Er der ikke vedtaget nogen bestemt Lasteplads i Havnen, staar det Skibsføreren frit for at vælge, men kun en Plads, som er sædvanlig Lasteplads. Dog har Befragteren Ret til at anvise saadan, naar han gjør det, forinden Skibet henlægges til Plads, som Skibsføreren har valgt, og denne er i saa Fald pligtig til at henlægge Skibet til den Plads, som anvises, saafremt Adgangen til samme er aaben, Skibet der kan ligge flot og sikkert samt uden

111. Är ej å den i befraktningsaftalet bestämda tid fartyget tillstådes å lastningsorten och färdigt att intaga last, ege befraktaren häfva fraktslutet; vare ock, der ej dröjsmålet bevisligen vållats af omständigheter, hvilka det icke berott af bortfraktare, befälhafvare eller besättning att afvända, berättigad till ersättning, efter pröfning af skiljemän, för all skada och förlust, som genom dröjsmålet honom tillskyndats.

Innehåller befraktningsaftalet icke någon bestämmelse angående tiden för lastningens början, ege befraktaren ej häfva fraktslutet på grund af uppehåll, som icke bevisligen varit af bortfraktare, befälhafvare eller besättning vålladt.

Vill befraktare, oaktadt fraktslutet icke häfves, fordra ersättning för uppehåll, vare han pligtig att sådant för befälhafvaren uppgifva innan hans gods till inlastning aflemnas; försummas det, vare han sitt anspråk qvitt.

112. Befraktare ege till annan öfverlåta de rättigheter, honom enligt befraktningsaftalet tillkomma, men svare ändock för de förbindelser, aftalet ålägger honom.

113. Ej må befraktares gods utan hans samtycke försändas med annat fartyg än det, som befraktats, så vida icke sådant nödfall, som i 159 eller 160 § omförmåles, dertill föranleder; sker det ändock, njute befraktaren ersättning, efter pröfning af skiljemän, för all derigenom uppkommande skada och förlust.

114. Är ej viss lastningsplats genom aftal bestämd, ege befraktare af helt fartyg fordra, att fartyget förläggas till den plats, han anvisar, så vida hinder ej möter att dit förlägga fartyget och detta kan ej mindre under lastningen der ligga flott och säkert, än äfven med intagen last åter derifrån utlöpa; åliggande det befraktaren, der han vill hafva fartyget så förlagdt, att på anmaning ofördröjligen meddela befälhafvaren behörig anvis-

## Danish Text.

111. If the ship is not at hand at the port of loading and ready to take in cargo at the time agreed upon in the contract of affreightment, the charterer has the right to break off the contract; he can, besides, claim to be indemnified for any damage caused by the delay, unless it can be shown that the delay is not due to the ship-owner, the master or the crew.

Should the contract of affreightment not contain any stipulation regarding the time when the loading is to begin, the charterer must put up with delays, unless it can be proved that such delay was due to the ship-owner, master or crew.

If the charterer, in any case, will demand indemnity, although the contract is not broken off, he must reserve his right to that before he begins to deliver the cargo.

112. A charterer can transfer to other person his rights under the contract of affreightment, but he continues nevertheless to be answerable for the fulfilment of the engagements involved by the charter-party.

113. Without the charterer's consent, the goods must not be forwarded by another ship than that which the contract relates to, unless transshipment is occasioned by such emergencies as are described in §§ 160 and 161. Should such forwarding nevertheless take place, the charterer can demand indemnity for all damage caused thereby.

114. If no definite place for loading in the harbour has been agreed upon, the charterer of a whole ship can demand that the ship be laid to at the place which he fixes, provided the passage to it is open, and the ship can remain afloat and safe there, and without hindrance leave it with the cargo on board; such instruction must, however, be given without delay on demand of the master, as this has otherwise the right to choose the place,

## Norwegian Text.

111. If the ship is not ready to load at the place of loading at the time appointed in the charter-party, the charterer may annul the contract, and shall, moreover, be entitled to compensation for all loss or damage which may be occasioned by the delay, unless it should be proved that such delay is not attributable to the owner or the master.

If the charter-party contains no stipulation as to the time when the loading is to commence, the charterer must submit to delay unless it is proved that it has been occasioned by circumstances for which the owner or the master is responsible.

If the charterer in any instance intends to demand compensation, though the contract be not annulled, he must reserve his right to do so before commencing the delivery of the cargo.

112. The charterer may transfer the right acquired by him by virtue of the charter-party, but shall, nevertheless, continue to be responsible for the engagements undertaken in the charter-party.

113. The goods of the charterer must not without his consent be forwarded in any other ship than the one mentioned in the charter-party, provided transshipment be not occasioned by such cases of emergency as mentioned in §§ 160 and 161. If this rule is not complied with, the charterer shall be entitled to compensation for all loss or damage resulting therefrom.

114. If no special loading place is agreed upon in the port of loading, such shall be left to the option of the master, provided the place selected by him be a usual place of loading. The charterer shall, however, be entitled to determine the place of loading, provided he does so before the ship is moored at the place selected by the master, who shall in such a case be bound to proceed to the place appointed if access to it is open, and the ship

## Swedish Text.

111. If the ship is not in the port of loading and ready to take in cargo at the time stipulated in the charter-party, the charterer shall have the right to annul the agreement and, moreover, be entitled to compensation for all the damage and loss suffered on account of the delay as proved by arbitrators, unless the delay can be proved to have been caused by circumstances beyond the control of the owners, master or crew.

Should not the charter contain any stipulation regarding the time for the commencement of the loading, the charterer has no right to annul the agreement on account of any delay, unless such delay is substantially proved to have been caused by the owners, the master or the crew.

If the charterer wishes to claim compensation for delay, although the agreement is not annulled, he must make a statement to that effect to the master before his goods are delivered for shipment, otherwise he forfeits his claim.

112. A charterer shall be able to transfer to another person his rights according to the charter-party, but shall nevertheless be responsible for the engagements binding upon him according to the agreement.

113. Except with the consent of the charterer, his goods shall not be forwarded in another ship than that chartered, unless any of the exigencies referred to in Art. 159 and 160 should cause such action to be adopted. Should such forwarding nevertheless take place, the charterer shall be entitled to such compensation for any damage and loss sustained thereby as arbitrators may prove to be due.

114. If no fixed place of loading is stipulated in the agreement, the charterer of a whole ship shall be able to claim that the ship shall be berthed at the place he appoints, provided nothing prevents the ship from being so berthed, or to remain there afloat and without danger during the loading, and to sail from the place with her cargo on board. If the charterer desires to have the ship berthed as aforesaid, it shall

## Dansk Text.

sædvanlig Lasteplads. Have flere befragtet Skibet, har den, der har befragtet over Halvdelen af Skibet, samme Ret som Enefragteren. Hvis flere, som tilsammen have befragtet over Halvdelen af Skibet, ere enige, have de Ret til at anvise Pladsen, saafremt dette sker, inden Skibet er henlagt til Plads, som Skipperen har valgt.

Den, som har befragtet det hele Skib, saavelsom den eller de, der have befragtet over Halvdelen af Skibet, have Ret til at forlange, at Skibet forhales til anden bekvem Lasteplads i Havnen, mod at betale alle dermed forbundne Omkostninger, jfr. § 119 i Slutningen.

Samme Ret har enhver Befragter af en vis Del af Skibet, naar Forhalingen kan ske uden Forulempelse for de andre Befragtere.

115. Den, som indlader Gods hvis Beskaffenhed medfører Fare eller Risiko for Skibet eller den øvrige Ladning, uden at angive denne Godsets Beskaffenhed, eller uden at iagttage de for Forsendelse af saadant Gods foreskrevne Regler, er ansvarlig for al Skade og alle Omkostninger, som derved foranlediges. Det samme gælder, naar nogen indlader Gods uden Skipperens Vidende, eller urigtigt betegner det Gods, han indlader, i hvilke Tilfælde Afskiberen derhos er pligtig at betale den højeste paa Afgangstedet gjældende Fragt.

Godset kan bringes i Land paa Afladerens Bekostning, eller, hvis det først opdages, efter at Skibet er gaaet til Søs, endog kastes over Bord, naar det ikke inden Fare kan beholdes om Bord, men i ethvert Fald bliver dog fuld Fragt at betale.

116. Ved Indladning har Befragteren at levere Godset ved Skibets Side, men derfra bekostes Indladningen af Bortfragteren, som ogsaa bærer alle Udgifter ved Stuvningen og til nødvendigt Underlag og Garnering.

Er Skibet saa dybtgaaende, at det ikke kan komme ind til

## Norsk Text.

Hinder komme ud derfra med indtagen Last. Er der flere Befragtere, er saadan Anvisning kun bindende for Skibsforeren, naar samtlige Befragtere er enige.

Den, som har befragtet det hele Skib eller vis Del deraf, har Ret til at forlange, at Skibet forhales til anden bekvem Lasteplads i Havnen, men Befragteren har at betale alle dermed forbundne Omkostninger.

115. Den, som indlader Gods hvis Beskaffenhed medfører Fare eller Risiko for Skibet eller den øvrige Ladning, uden at angive denne Godsets Beskaffenhed eller uden at iagttage de for Forsendelse af saadant Gods foreskrevne Regler, er ansvarlig for al Skade og alle Omkostninger, som derved foranlediges. Det samme gælder, naar Nogen indlader Gods uden Skibsforerens Vidende eller urigtigt betegner det Gods, han indlader, i hvilke Tilfælde Afskiberen derhos er pligtig til at betale den højeste paa Afgangstedet gjældende Fragt.

Godset kan bringes iland paa Afladerens Bekostning eller, hvis det først opdages, efterat Skibet er gaaet tilsjøs, endog kastes overbord, naar det ikke inden Fare kan beholdes om bord, men i ethvert Fald bliver dog fuld Fragt at betale.

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Er Skibet saa dybtgaaende, at det ikke kan komme ind til ved-

## Svensk text.

ning. Hafva flere befraktat fartyget, hvar till viss del, oeh förena sig samtliga befraktarne om viss lastningsplats, ege de enahanda rätt, som, efter ty nyss är sagdt, tillkommer befraktare af helt fartyg.

Befälhafvaren vare, der fartyget befraktats i sin helhet eller till viss del, pligtig att, på befraktarens begäran, från den plats, dit fartyget för lastningen förlagts, vidare förhålla det till annan bekväm lastningsplats, men njnte därför af befraktarens ersättning, som i händelse af tvist bestämmas af skiljemän.

115. Den, som inlastar gods, hvars förande kan medföra äfventyr för fartyget eller för den öfriga lasten, utan att angifva denna godsets beskaffenhet eller utan att iakttaga de föreskrifter, som för försändande af sådant gods må vara gifna, svare för all kostnad oeh skada, som derigenom annan tillskyndas; skolande ersättningen i händelse af tvist bestämmas af skiljemän. Lag samma vare, der någon inlastar gods utan befälhafvarens vetskap eller origtigt angifver gods, som inlastas; den, som godset inlastat, vare oek pligtig att därför erlægga högsta frakt, som för dylikt gods gälde i lastningsorten för sådan resa, som fartyget företager.

Gods, som sålunda inlastats, må på aflastarens bekostnad åter föras i land eller, om förhållandet nppdages först sedan fartyget gått till sjøs oeh godset icke utan äfventyr kan behållas i fartyget, kastas öfver bord; men den, som inlastat godset, gælde ändock full frakt.

116. Vid inlastning åligge befraktaren att till fartygets sida framföra godset; öfriga lastningskostnaden äfvensom kostnaden för godsets stufning samt för nödigt underlag oeh garnering skall af bortfraktaren bestridas.

Är genom aftal viss plats bestämd för lastens intagande,

## Danish Text.

which, however, at all events must be a usual loading place. If several have chartered the ship, he who has chartered more than half of the ship has the same right as the charterer of a whole ship. If several, who together have chartered more than half of the ship, are unanimous, they have the right to fix the place for lying to, provided they do it before the ship is moored at the place which the master has chosen.

The person who has chartered the whole ship, as well as he or they who have chartered more than half of it, have the right to demand that the ship shall be shifted to another harbour on paying all the costs in fine).

Every charterer of a definite portion of the ship has the same right, provided the shifting may be effected without annoyance to the other charterers.

**115.** He who loads goods which from their nature involve danger or risk for the ship or the rest of the cargo, without mentioning the nature of such goods, or without observing the regulations prescribed for the carrying of such goods, is responsible for all damage and all expenses occasioned thereby. The same is the case when anyone loads goods without the master's knowledge, or designates incorrectly the goods he loads, in which case, moreover, the shipper is bound to pay the highest freight at the place of departure.

The goods can be set ashore at the expense of the consigner, or, if they are first discovered when the ship has put to sea, even be thrown overboard, if they cannot without danger be retained on board; but in any case full freight can be claimed.

**116.** In loading the charterer has to deliver the goods at the ship's side, but from there the cost of loading shall be borne by the freighter, who also bears all expenses with the stowing and necessary supports and dunnage.

Should the ship draw so much water that it cannot get to the

## Norwegian Text.

can lie there afloat and safely, and get away therefrom without hindrance after loading her cargo. If the ship is chartered by several persons, the appointment of the place of loading shall only be binding on the master if it is agreed to by all the charterers.

The charterer of the entire ship, or certain parts thereof, may demand the removal of the ship to another convenient place of loading in the port, on paying all the expenses incurred thereby.

convenient loading place in the connected therewith (cf. § 119 in fine).

**115.** Whoever ships goods which, according to their nature, are liable to endanger the ship or the rest of the cargo, or expose it to any risk, shall, if he has not stated the nature of the goods, or observed the regulations prescribed for the transportation thereof, be responsible for any loss or damage or expenses caused thereby. The same rule shall be applicable if anyone ships goods without the knowledge of the master, or if he gives a false description of the goods shipped, in which cases the shipper shall likewise be liable to pay freight on the goods at the highest rate prevailing at the place of departure.

The goods may be landed at the expense of the shipper, or even thrown overboard, if they are not discovered before the departure of the ship and cannot be kept on board without danger, but in any case the shipper shall be liable to pay full freight on such goods.

**116.** In loading, the charterer shall deliver the goods to the ship's side, upon which the further loading shall be at the expense of the owners, who shall likewise defray all expenses incurred in stowage, and of dunnage and ceiling when necessary.

If the draught of the ship is so great as to prevent it

## Swedish Text.

be his duty on requisition to furnish the master with proper directions without delay. If several persons have chartered the ship, each holding a certain portion, and they all agree as to a particular place of loading, they shall be entitled to the rights of a charterer of a whole ship, as mentioned above.

When a whole ship or portion thereof is chartered the master shall be bound, at the request of the charterer, to move the vessel from the place where she has been berthed for loading to any other convenient loading-place. The charterer shall compensate the master for such moving, and, should any dispute arise, such compensation shall be decided by arbitration.

**115.** Any person loading goods the carrying of which endangers the ship or any other portion of the cargo, without stating the character of the goods, or observing the regulations given for the conveyance of such goods, shall be liable to pay all costs and damage incurred. In case of dispute the compensation shall be determined by arbitration. The same law shall also apply, should any person ship goods without the master's knowledge or make a false statement regarding the goods loaded. The person shipping the goods shall also be liable to pay the highest freight ruling for similar goods at the port of loading for the intended voyage.

Goods loaded as aforesaid may be re-landed at the expense of the shipper, or thrown over board, if the matter be not discovered before the ship is at sea and the goods cannot remain in the ship without danger.

**116.** When loading, it is the duty of the charterer to bring the goods alongside the ship; other loading expenses, as well as the cost of stowing the goods and of necessary dunnage and trimming, are to be borne by the owners.

If a certain place for the loading of the cargo is fixed

## Dansk Text.

vedtagen eller, hvis ingen Vedtagelse har fundet Sted, til sædvanlig Lasteplads i Havnen, har Skipperen dog at bekoste Godset fra Land ud til Skibet.

117. Skipperen maa ikke uden Afladerens Samtykke laste hans Gods paa Skibets Dæk (jfr. § 190) eller i dets Baade, ej heller hænge det udenbords paa dets Sider.

118. Befragteren har Krav paa, at Skipperen holder Skibet rede til Lastning i en vis Tid (Liggedage) uden Godtgørelse og derefter i en yderligere Tid (Overliggedage) mod særlig Godtgørelse.

Liggedagene begynde at løbe fra den første Sognedags Morgen, efter at Skibet paa behørig Lasteplads er færdigt til at laste, og Skipperen derom har underrettet Afladeren, dog først fra anden Sognedags Morgen, hvis Underretningen er meddelt efter Kl. 6 om Eftermiddagen eller paa en Son- eller Helligdag. Er Afladeren ikke kendt eller ikke at træffe, skal Underretning gives ved Bekendtgørelse i Stedets Avis, eller paa anden der brugelig Maade.

119. I Mangel af anden Aftale bestemmes Liggedagenes Antal efter Nettodrægtigheden saaledes:

## Norsk Text.

tagen eller, hvis ingen Vedtagelse har fundet Sted, til sædvanlig Lasteplads i Havnen, har Skibsføreren dog at bekoste Godset fra Land ud til Skibet.

117. Skibsføreren maa ikke uden Afladerens Samtykke laste hans Gods paa Skibets Dæk (jfr. § 190) eller i dets Baade, ei heller hænge det udenbords paa dets Sider.

118. Befragteren har Krav paa, at Skibsføreren holder Skibet rede til Lastning i en vis Tid (Liggedage) uden Godtgørelse og derefter i en yderligere Tid (Overliggedage) mod særlig Godtgørelse.

Liggedagene begynder at løbe fra den første Sognedags Morgen, efterat Skibet paa behørig Lasteplads er færdigt til at laste, og Skibsføreren derom har underrettet Afladeren, dog først fra anden Sognedags Morgen, hvis Underretningen er meddelt efter Klokken 4 om Eftermiddagen eller paa en Son- eller Helligdag. Er Afladeren ikke kjendt eller ikke at træffe, skal Underretningen gives ved Bekendtgørelse i en af Stedets Aviser eller paa anden der brugelig Maade.

119. I Mangel af anden Aftale bestemmes Liggedagenes Antal efter Nettodrægtigheden saaledes:

## Svensk text.

men är fartyget så djupgående, att det icke kan förläggas till den plats, som aftalats, skall bortfraktaren bekosta godsets framförande till fartygets sida; lag samma vare, der icke viss lastningsplats aftalats, men fartyget af anledning, som nyss är sagd, icke kan inkomma i den hamn, befraktningsaftalet bestämmer.

117. Utan aflastarens samtycke må hans gods icke lastas å fartygets däck eller i dess båt eller hängas på sidan utom bords.

118. Är fartyg befraktadt i sin helhet eller till viss del, vare befälhafvaren skyldig att utan ersättning en viss tid afbida, att godset aflemnas (liggedagar). Är ej lastningen inom liggedagarne fullbordad, vare befälhafvaren skyldig att mot ersättning dertill lemna ytterligare rådruum (öfverliggedagar). Liggedagarne tillsammans med öfverliggedagarne utgöra fartygets lastningstid.

Lastningstiden räknas från och med nästa helgfria dag efter det fartyget är færdigt att mottaga last och befälhafvaren derom underrättat aflastaren, så ock, der anvisning, som i 114 § sägs, meddelats, fartyget blifvit förlagdt till den anvisade platsen; dock att, der sådan underrättelse meddelas å helgdag eller senare än klockan fyra eftermiddagen å sökendag, underrättelsen säknas såsom afgifven först följande sökendag. Är aflastaren icke känd eller icke att träffa, skall underrättelsen meddelas genom kungörelse i tidning inom orten eller på annat der brukligt sätt.

119. I brist af särskildt aftal beräknas liggedagarne, olika för segelfartyg och för ångfartyg, sålunda:

## Danish Text.

place agreed on, or, if no agreement has taken place, at the usual loading place in the harbour, the master shall, nevertheless, defray the expenses of the transport of the goods from shore out to the ship.

117. The master must not, without the consigner's permission, stow his goods on the ship's deck or in the boats, nor hang the goods outside on the sides of the ship.

118. The charterer can demand that the ship be held ready for loading for a certain length of time (lying-days) without compensation, and thereafter for a further period of demurrage on special compensation.

The lying-days begin to run from the first week-day's morning after the ship is ready to load at the proper place of loading, if the master has advised the consigner of the fact, but from the second week-day's morning, if intelligence has been given to the consigner after 6 o'clock p. m. or on a Sunday or Holy-day. If the consigner is not known or is not to be found, information shall be given by advertisement in the local newspaper or in some other way customary there.

119. In default of any other agreement, the number of lying-days is determined according to the net-tonnage, as follows:

## Norwegian Text.

from getting in to the berth stipulated on, or, if no berth has been fixed, then to the usual loading berth in the port, the master shall defray the expenses of the conveyance of the goods from the shore to the ship.

117. The master must not without the consent of the shipper place the cargo on the upper deck of the vessel (see § 190) or in the boats, or hang it overboard over the sides of the ship.

118. The charterer may demand that the master shall keep the ship prepared for loading during a certain period (lay days) without compensation, and subsequently during a further space of time (days of demurrage) on paying a compensation.

The lay days shall commence to run from the morning of the first working day after the time the ship is ready to load at the proper loading place, and the master has informed the charterer thereof, but from the morning of the second working day after such time if the notice has been given after four o'clock in the afternoon, or on a Sunday or holy-day. If the shipper is not known, or not to be found, the notification shall be made by means of an advertisement in a local newspaper or otherwise in accordance with the custom of the place.

119. In default of any other agreement the number of the lay days shall be determined as follows in proportion to the net tonnage of the ship:

## Swedish Text.

by agreement, but the ship's draught is too deep to admit her berthing there, the owners shall pay for the bringing of the goods alongside the ship. The same law shall also apply, should no special place of loading have been agreed upon, but the ship be unable to enter the harbour fixed in the charterparty, owing to the aforesaid reason.

117. Unless with the consent of the shipper, his goods are not to be loaded on deck or in any of the ship's boats nor be hung over the side.

118. If the whole or a certain portion of the ship is chartered, the master shall have to remain, without compensation, for a certain length of time for the delivery of the goods (Laying days). Should the loading not be completed before the expiration of the laying days, the master shall be obliged, in consideration of compensation, to give further time for loading (Days on Demurrage). The laying days together with the days on demurrage form the ship's time for loading.

The time for loading shall be counted from and including the day (not Sunday or holiday) immediately following the day on which the ship is ready to receive cargo and due notice of such readiness has been given by the master to the shipper, and the ship moreover has been moored into the berth which in accordance with Art. 114 may have been directed. Should such notice, however, be given on a holiday or later than 4 o'clock p. m. on a working day, it shall be counted as given on the working day next following. If the shipper is unknown or cannot be found, the notice shall be inserted in one of the local newspapers or otherwise be made known in the manner customary in the place.

119. Failing any special agreement, the different laying days for steamers and sailing ships are to be calculated in the following manner viz:

## Dansk Text.

Naar Skibet ikke er over 50 men ikke over 100	Register Tons.	For Sejlskib, 2 Dage.	For Dampskib, 2 Dage.
—	35	3	2
—	50	4	3
—	100	7	—
—	150	8	—
—	200	9	—
—	250	10	—
—	300	11	—
—	400	12	—
—	500	13	—
—	600	14	—
—	750	15	—
—	900	16	—
—	1100	17	—
—	1350	18	—
—	1650	19	—
—	2000	—	10

Er Skibet over 2000 Tons, gives saavel for Sejlskib som for Dampskib 1 Dags Tillæg for Overskud indtil 400 Tons og saa fremdeles.

Som Liggedage medregnes ikke Son- og Helligdage, ej heller Dage, paa hvilke Lastning ikke har kunnet finde Sted paa Grund af Forhindringer fra Skibets Side; en Tid, der ikke overskrider en halv Arbejdsdag, regnes dog kun for en halv Dag.

Ere Liggedagene bestemte til et vist Antal lobende Dage, medregnes ogsaa Son- og Helligdage.

Til Liggedage medregnes ligeledes det Ophold, som foraarsages ved Skibets Forhaling til anden Lastningsplads i Havnen i Medfør af § 114, 2det Stykke.

120. Overliggedagenes Antal er det halve af Liggedagenes, hvis intet andet er særlig vedtaget. De beregnes som lobende Dage.

Godtgørelsen for Overliggedage beregnes i Mangel af anden Aftale med 30 Ore om Dagen for Sejlskib og med 40 Ore om Dagen for Dampskib pr. Registerton efter Nettodragtighed. Den beregnes pr. halv Dag, saaledes at hvad der ikke

## Nordisk Sørst: Sølovene.

## Norsk Text.

Naar Skibet ikke er over 50 men ikke over 100	Register Tons.	For Sejlskib, 4 Dage.	For Dampskib, 2 Dage.
—	50	4	3
—	100	6	—
—	150	7	—
—	200	8	—
—	250	9	—
—	300	10	—
—	400	11	—
—	500	12	—
—	600	13	—
—	750	14	—
—	900	15	—
—	1100	16	—
—	1350	17	—
—	1650	18	—
—	2000	19	—

Er Skibet over 2000 Tons, gives saavel for Sejlskib som for Dampskib 1 Dags Tillæg for Overskud indtil 400 Tons og saa fremdeles.

Som Liggedage medregnes ikke Son- og Helligdage, ej heller Dage, paa hvilke Lastning ikke har kunnet finde Sted paa Grund af Forhindringer fra Skibets Side; en Tid, der ikke overskrider en halv Arbejdsdag regnes dog kun for en halv Dag.

Er Liggedagene bestemte til et vist Antal lobende Dage, medregnes ogsaa Son- og Helligdage.

Til Liggedage medregnes ligeledes det Ophold, som foraarsages ved Skibets Forhaling til anden Lastningsplads i Havnen i Medfør af § 114, 2det Stykke.

120. Overliggedagenes Antal er det halve af Liggedagenes, hvis intet andet er særlig vedtaget. De beregnes som lobende Dage.

Godtgjørelsen for Overliggedage beregnes i Mangel af anden Aftale med 30 Ore om Dagen for Sejlskib og med 40 Ore om Dagen for Dampskib pr. Registerton efter Nettodragtighed. Den beregnes pr. halv Dag, saaledes at hvad der ikke over-

## Svensk text.

Naar Skibet ikke er over 50 men ej öfver 100	Register ton.	For segelfartyg, 4 dagar.	For ångfartyg, 2 dagar.
—	50	4	3
—	100	6	—
—	150	7	—
—	200	8	—
—	250	9	—
—	300	10	—
—	400	11	—
—	500	12	—
—	600	13	—
—	750	14	—
—	900	15	—
—	1100	16	—
—	1350	17	—
—	1650	18	—
—	2000	19	—

Har fartyget större drägtighet än 2000 registerton, beräknas ytterligare en liggedag för öfverskjutande drägtighet af högst 400 ton och så vidare.

Såsom liggedagar räknas icke sön- och helgdagar, icke heller de dagar, under hvilka lastning ej kunnat ske till följd af något från fartyget härrörande hinder; dock att, der sådant hinder icke varat längre än en half arbetsdag, endast en half dag afräknas. Äro genom öfversenskommelse liggedagarna bestämda till visst antal löpande dagar, inräknas jemväl sönoch helgdagar.

I liggedagarna inräknas jemväl de uppehåll, som orsakas genom fartygets förhållning från en lastningsplats till annan, efter ty i 114 § andra stycket sägs.

120. Der ej annorlunda af talats, skall antalet öfverliggedagar utgöra hälften af liggedagarnas antal; de beräknas såsom löpande dagar.

Ersättning för öfverliggedagar skall, der ej annat aftal skett, utgå med trettio öre om dagen för hvarje ton af fartygets drägtighet, om fartyget är segelfartyg, och med fyratio öre, om det är ångfartyg; skollande ersättning för del af en



For vessels not exceeding 200 tons, but not exceeding 350 tons.		Register- tons.	For sailing ships. 2 days.		For steam ships. 2 days.	
Over 350	—	350	—	—	—	—
350	—	350	—	4	—	—
300	—	300	—	6	—	—
250	—	250	—	7	—	—
200	—	200	—	8	—	—
150	—	150	—	9	—	—
100	—	100	—	10	—	—
50	—	50	—	11	—	—
—	—	—	—	12	—	—
—	—	—	—	13	—	—
—	—	—	—	14	—	—
—	—	—	—	15	—	—
—	—	—	—	16	—	—
—	—	—	—	17	—	—
—	—	—	—	18	—	—
—	—	—	—	19	—	—
—	—	—	—	20	—	—

Should the ship's burden exceed 2000 tons, one day's addition is given, for sailing ships as well as for steamships, for a surplus not exceeding 400 tons, and so on.

Sundays and Holy days are not to be counted as lying-days, nor days on which loading cannot take place on account of any hindrance in connection with the ship; a period that does not exceed half a working day is only reckoned as a half day.

Should the lying-days have been fixed at a definite number of running days, Sundays and Holy days are also reckoned.

As lying-days are also reckoned the delay caused by the shifting of the ship to another loading place in the harbour, in accordance with § 114, sect. 2.

**120.** The number of demurrage days is calculated at half the number of the lying-days, unless otherwise agreed. They are counted as running days.

The demurrage shall, in default of any other agreement, be reckoned at 30 öre per day for a sailing ship, and 40 öre per day for a steam-ship per register ton according to the net tonnage. It is calculated per half-day in such a

for a ship not exceeding		Register Tons		For sailing ships		for steam ships	
—	—	50	100	4 days	2 days	—	—
—	100	—	150	7	—	—	—
—	150	—	200	8	—	—	—
—	200	—	250	9	—	—	—
—	250	—	300	10	—	—	—
—	300	—	400	11	—	—	—
—	400	—	500	12	—	—	—
—	500	—	600	13	—	—	—
—	600	—	750	14	—	—	—
—	750	—	900	15	—	—	—
—	900	—	1100	16	—	—	—
—	1100	—	1350	17	—	—	—
—	1350	—	1650	18	—	—	—
—	1650	—	2000	19	—	—	—

For steam ships and sailing ships exceeding 2000 tons one extra day is added for any excess of tonnage up to 400 tons, and one day for every 400 tons or part thereof.

In the calculation of the lay days neither Sundays nor holydays shall be computed, nor days on which loading cannot take place on account of hindrances on the part of the ship. A time not exceeding half the hours of labour of the day shall only count as half a day.

If the lay days are fixed at a certain number of running days, Sundays and holy-days shall also be included.

In calculating the lay days any delay incurred by the removal of the ship to another loading berth in the port (§ 114 2nd section) shall be counted.

**120.** In default of any other agreement the number of the days of demurrage shall be one half of the lay days. They are computed as running days.

The demurrage payable shall, in default of any other agreement, be 30 Ore per day for a sailing ship, and 40 Ore for a steam ship, for each register ton of the net tonnage of the ship. The calculation is by half days, any period not

For vessels not exceeding		Register Tonnage	For sailing ships	For steam ships
above 50 but not exceeding 100		50 . . . . 100	4 days	2 days
—	100	100 . . . . 150	7	3
—	150	150 . . . . 200	8	—
—	200	250 . . . . 300	9	—
—	250	300 . . . . 400	10	4
—	300	400 . . . . 500	11	—
—	400	500 . . . . 600	12	5
—	500	600 . . . . 750	13	—
—	600	750 . . . . 900	14	6
—	750	900 . . . . 1100	15	—
—	900	1100 . . . . 1350	16	7
—	1100	1350 . . . . 1650	17	8
—	1350	1650 . . . . 2000	18	9
—	1650	2000 . . . .	19	10

If the ship's burden exceeds 2000 Register tons an additional laying day is to be counted for every 400 tons over and so on.

Sundays and holidays are not to be counted as laying days, nor the days during which loading has been rendered impossible owing to any hindrance in connection with the ship. Should, however, such hindrance not have lasted more than half a working day, deduction is only to be made for half the day. Should by agreement the laying days have been fixed at a certain number of consecutive days, Sundays and holidays are also counted as laying days.

Any delay caused by moving the ship from one loading place to another as referred to in Art. 114 sec. 2 shall also be included in the laying days.

**120.** Unless otherwise agreed, the number of days on demurrage shall be calculated at half the number of the laying days and are to be counted as consecutive days.

Compensation for demurrage shall be paid, unless otherwise agreed, at the rate of thirty öre per day for each ton of the ship's burden, if the vessel is a sailing ship, and at the rate of forty öre, if the vessel is a steamship. This compensation

overskrider Dagens halve Arbejdstid, regnes for en halv Dag, og hvad der er over, for en hel.

Overliggedagspenge forfalde til Betaling for hver Dag. Er Betaling ikke erlagt, naar Skibet er færdigt til at sejle, er Skipperen berettiget til at gøre Paategning paa Konnossementet om det skyldige Beløb.

121. De ovenfor givne Regler om bestemte Liggedage og Overliggedage ere ikke anvendelige paa Skibe, som gøre regelmæssige Rejser mellem bestemte Steder efter en forud offentliggjort Plan.

122. Efter Overliggedagenes Udlob er Skipperen ikke pligtig at vente længere paa at modtage Ladning, men alt Gods, som er leveret inden deres Udlob, maa han tage med, selv om dets Indladning og Stuvning kræver længere Ophold; for dette har han dog Krav paa fuld Erstatning, mindst som for Overliggedage, og er berettiget til, i Mangel af Betaling, derom at gøre Paategning paa Konnossementet.

123. Angaar Befragtningen Stykgods, har Afladeren at levere Godset efter Skipperens Tilsigelse; er Afladeren ikke kendt eller ikke at træffe, sker Tilsigelse paa den Maade, som i § 118 er foreskrevet for lignende Tilfælde. Leveres Godset derefter ikke saa betimelig, at det bekvemmelig kan indlades og stuves, er Skipperen ikke pligtig at medtage det, men kan alligevel fordre fuld Fragt, jfr. dog § 130.

For Levering af Gods til saadanne Skibe, som omhandles i

skrider Dagens halve Arbejdstid, regnes for en halv Dag, og hvad der er over, for en hel.

Overliggedagspenge forfalder til Betaling for hver Dag. Betales de ikke efter Paakrav, og heller ikke Sikkerhed for deres berettiget til efter Omstændighederne enten at stoppe videre Indlastning, indtil Betaling sker, uden at Overliggedagenes Løb herved afbrydes, eller at anse Kontrakten som hævet af Befragteren, der har at betale fuld Fragt og paaløbne Overliggedagspenge.

Er Overliggedagspengene ikke betalte, naar Skibet er færdigt til at seile, har Skibsføreren i alle Tilfælde Ret til at gjøre Paategning paa Konnossementet om det skyldige Beløb.

121. De ovenfor givne Regler om bestemte Liggedage og Overliggedage er ikke anvendelige paa Skibe, som gjør regelmæssige Reiser mellem bestemte Steder efter en forud offentliggjort Plan.

122. Efter Overliggedagenes Udlob er Skibsføreren ikke pligtig til at vente længere paa at modtage Ladning; men alt Gods, som er leveret inden deres Udlob, maa han tage med selv om dets Indladning og Stuvning kræver længere Ophold; for dette har han dog Krav paa fuld Erstatning, mindst som for Overliggedage, hvorom han, i Mangel af Betaling, er berettiget til at gjøre Paategning paa Konnossementet.

123. Angaar Befragtningen Stykgods, har Afladeren at levere Godset efter Skibsføreren Tilsigelse; er Afladeren ikke kendt eller ikke at træffe, sker Tilsigelse paa den Maade, som i § 118 er foreskrevet for lignende Tilfælde. Leveres Godset derefter ikke saa betimelig, at det bekvemmelig kan indlades og stuves, er Skibsføreren ikke pligtig til at medtage det, men kan alligevel fordre fuld Fragt, jfr. dog § 130.

For Levering af Gods til saadanne Skibe, som omhandles i

dag utgå såsom för hel öfverliggedag, der samma del utgör mer än hälften af en arbetsdag, men eljest för en half dag.

Ersättningen är för hvarje dag förfallen till betalning.

Betaling stilles, er Skibsføreren berettiget til efter Omstændighederne enten at stoppe videre Indlastning, indtil Betaling sker, uden at Overliggedagenes Løb herved afbrydes, eller at anse Kontrakten som hævet af Befragteren, der har at betale fuld Fragt og paaløbne Overliggedagspenge.

Er Overliggedagspengene ikke betalte, naar Skibet er færdigt til at seile, har Skibsføreren i alle Tilfælde Ret til at gjøre Paategning paa Konnossementet om det skyldige Beløb.

121. Hvad här ofvan är stadgadt angående viss lastningstid vare ej gällande för fartyg, som gör regelbundna resor mellan vissa orter efter en på förhand kungjord plan.

122. Befälhafvaren vare ej pligtig att efter lastningstidens utgång mottaga gods till inlastning. Allt gods, som inom nämnda tid aflemnats, vare han pligtig att medtaga, ändå att fartyget för godsets intagande och stufning uppehålls utöfver lastningstiden; befraktaren ersätte dock all deraf uppkommande skada och förlust, hvilken ersättning i händelse af tvist skall bestämmas af skiljemän och ej må sättas lägre än för öfverliggedagar.

123. Angår befraktningen stykegods, ällige aflastaren att på befälhafvarens tillsägelse aflemna godset till inlastning; är aflastaren icke känd eller icke att träffa, sker tillsägelse på sätt 118 § för sådant fall stadgar. Aflemnas icke, oakadt tillsägelse skett, godset så tidigt, att det bekvämligen kan intagas och stufvas, vare befälhafvaren icke skyldig att medtaga godset, men befraktaren gäldade ändock full frakt.

Hvad här är sagdt om befälhafvares skyldighet att tillsäga

## Danish Text.

manner, that what does not exceed half the working time of a day, is reckoned as a half day, and what is over half the working time as a whole day.

The payment for demurrage is due from day to day. Should the money not be paid before the ship is ready to sail, the master has a right to endorse the bill of lading for the amount due.

**121.** The above regulations in reference to definite lying-days and demurrage-days shall not be applied to ships running regularly between definite ports according to a plan published beforehand.

**122.** After the expiration of the demurrage-days the master is not bound any longer to receive cargo; but he shall take along all goods delivered before their expiration, even if the loading and stowing of them demand further delay; for this delay, however, he has a right to full indemnity, at least as much as for demurrage-days, and he has a right, lacking payment, to endorse the bill of lading in this respect.

**123.** If the chartering refers to general cargo, the shipper shall deliver the goods according to the master's summons: should the shipper not be known, or if he is not to be found, the summons shall be made in the manner prescribed in § 118 for similar cases. Should after this the goods not be delivered in good time, so that they can be conveniently loaded and stowed, the master shall not be bound to take them along, but can nevertheless demand full freight, cfr. however § 130.

For delivering goods to such ships as are mentioned

## Norwegian Text.

exceeding half the hours of labour of the day being counted as half a day, but if more, as a whole day.

The payment for days of demurrage shall fall due each day. If payment is not made on demand, or security be not given for such payment, the master may, according to circumstances, either stop further loading until payment is made, in which case the days of demurrage shall continue running, or consider the agreement as annulled by the charterer, who shall then be liable for the payment of the whole freight and demurrage.

If the demurrage has not been paid by the time the ship is ready to depart, the master shall, under all circumstances, be entitled to endorse the bill of lading with a statement concerning the amount due.

**121.** The rules contained above as to a fixed number of lay days and days of demurrage shall not be applicable to ships trading regularly between certain places according to a previously published plan.

**122.** After the expiry of the days of demurrage the master shall not be bound to wait longer for the delivery of the cargo, but all goods delivered within their expiry must be shipped, even if by the loading and stowing thereof the ship should be detained beyond the time. For the delay thus caused the master shall be entitled to demand full compensation, at least equal to the amount of the demurrage. In default of such payment, the master shall be entitled to make an endorsement thereof on the bill of lading.

**123.** If the ship is chartered for the conveyance of general merchandise (general cargo), the shipper shall deliver the goods in accordance with the directions of the master. Should the shipper not be known or not be met with, a call shall be made upon him to deliver the goods in accordance with the directions contained in § 118 respecting similar cases. If the goods are not thereafter delivered in time to permit of their being conveniently shipped and stowed, the master is not bound to receive them, but is, nevertheless, entitled to demand the full freight for the same, subject however to the reservations contained in § 130.

No notification can be demanded for the delivery of

## Swedish Text.

for demurrage shall be paid for any part of a day as for a whole day, in case such part exceeds more than half a day, but otherwise only for half a day.

The said compensation is due for payment day by day.

— — — — —  
The master may, for such payment, the master may, according to circumstances, either stop further loading until payment is made, in which case the days of demurrage shall continue running, or consider the agreement as annulled by the charterer, who shall then be liable for the payment of the whole freight and demurrage.

If the demurrage has not been paid by the time the ship is ready to depart, the master shall, under all circumstances, be entitled to endorse the bill of lading with a statement concerning the amount due.

**121.** The above enactments respecting a certain time for loading shall not apply to ships trading regularly between certain ports according to an itinerary previously published.

**122.** The master is not bound to receive goods for loading subsequent to the expiration of the loading time. All goods delivered within the said time the master shall be bound to receive, even if the ship should be detained over the loading time by the loading and stowing of the said goods. The charterer shall, however, be bound to pay compensation for all damage and loss occasioned thereby, the amount of which, in case of dispute, shall be determined by arbitration and shall never be fixed at a lower figure than for days on demurrage.

**123.** If the chartering refers to general cargo, it is the duty of the shipper to deliver the goods for loading, on requisition being made by the master. Should the shipper be unknown or impossible to find, notice is to be given in the manner prescribed in Art. 118. If, in spite of due notice having been given, the goods are not delivered in sufficient time to allow of their being conveniently loaded and stowed, the master shall not be bound to receive the goods, but the charterer shall nevertheless be bound to pay the freight in full.

The duty of the master to notify the shippers of cargo,

§ 121, kan ingen særlig Tilsigelse kræves.

124. Naar det af Afladeren begæres, skal Skipperen selv eller ved Styrmanden meddele Bevis for Godsets Modtagelse, efterhaanden som det afleveres. Saadanne Beviser blive at tilbagelevere til Skipperen, naar Konnossement underskrives, eller naar Godset forinden udlosses, jfr. § 127.

125. Afladeren er pligtig at overlevere Skipperen de til Godsets Forsendelse fornødne Papirer inden Udlobet af den for Ladningens Levering bestemte Tid. Forsommer han dette, og Skibets Afgang derved forsinkes, kan Skipperen forlange Erstatning, mindst som for Overliggedage, og i Mangel af Betaling derom gore Paategning paa Konnossementet.

Skipperen har at drage Om-sorg for, at han kan være færdig til at afsejle, saa snart Ladningen er indtagen, og de fornødne Papirer ere overleverede til ham. Viser han Forsømmelse hermed, eller forhæler Afrejsen, er Befragteren berettiget til Erstatning for Skade, som derved foranlediges, samt efter Omstændighederne til at hæve Kontrakten.

126. Befragter af helt Skib er berettiget til at hæve Kontrakten mod at betale halv Fragt samt Erstatning for Overliggedage og yderligere Ophold, som maatte have fundet Sted, naar han for Skipperen opsiges Kontrakten, forinden Skibet er afgaaet fra det Sted, hvor Rejsen skal begynde. Er ingen Last leveret inden Udlobet af Overliggedagene, anses Befragteren at have hævet Kontrakten. Omfatter Befragtningen flere Rejser, erlægges halv Fragt for den første og en Fjerdedels Fragt for de øvrige, men halv

§ 121, kan ingen særlig Tilsigelse kræves.

124. Naar Afladeren begjærer det, skal Skibsføreren selv eller ved Styrmanden meddele Bevis for Godsets Modtagelse, efterhaanden som det afleveres. Saadanne Beviser bliver at tilbagelevere til Skibsføreren, naar Konnossementet underskrives, eller naar Godset forinden udlosses, jfr. § 127.

125. Afladeren er i Mangel af anden Aftale pligtig til at overlevere Skibsføreren de til Godsets Forsendelse fornødne Papirer inden Udlobet af den for Ladningens Levering bestemte Tid. Forsommer han dette, og Skibets Afgang derved forsinkes, kan Skibsføreren forlange Erstatning, mindst som for Overliggedage, og i Mangel af Betaling gjøre Paategning derom paa Konnossementet.

Skibsføreren har at drage Om-sorg for, at han kan være færdig til at afsejle, saasnart Ladningen er indtagen, og de fornødne Papirer ere overleverede til ham. Viser han Forsømmelse hermed, eller forhæler han iøvrigt Afreisen, er Befragteren berettiget til Erstatning for Skade som derved foranlediges, samt efter Omstændighederne til at hæve Kontrakten.

126. Befragter af helt Skib er berettiget til at hæve Kontrakten mod at betale halv Fragt samt i Tilfælde Erstatning for Overliggedage og yderligere Ophold, som maatte have fundet Sted, naar han for Skibsføreren opsiges Kontrakten, forinden Skibet er afgaaet fra det Sted, hvor Rejsen skal begynde. Er ingen Last leveret inden Udlobet af Overliggedagene, anses Befragteren for at have hævet Kontrakten. Omfatter denne flere Rejser, erlægges halv Fragt for den første og en Fjerdedels Fragt for de øvrige

aflastare vare ej gällande med afseende å fartyg, som i 121 § omförmåles.

124. Då inlastning sker, skall befälhafvaren, själf eller genom styrmannen, på aflastarens begäran meddela bevis om godsets mottagande, allt efter som det aflemnas. Sådant lastqvitto bör till befälhafvaren återställas när konnossement af honom undertecknas; lossas godset innan konnossement derå utfärdats, skall nämnda qvitto återställas när godset utlemnas.

125. Aflastaren åligger att inom den för lastningen bestämda tid tillställa befälhafvaren alla nödiga, lasten rörande handlingar; försummas det och fördröjes till följd deraf fartygets afgång utöfver lastningstiden, njute bortfraktaren ersättning för uppehållet, efter ty i 120 och 122 §§ sägs.

Befälhafvaren vare pligtig sörja för att fartyget, så snart lasten intagits och nödiga handlingar aflemnats, kan antråda resan; underlåter han det eller fördröjer eljest utan anledning resans anträdande, ege befraktaren rätt att njuta ersättning, efter pröfning af skiljemän, för skada och förlust, som genom dröjsmålet vållas, samt att häfva aftalet, om skäl dertill äro.

126. Befraktare af helt fartyg ege rätt att häfva fraktslutet mot erläggande af half frakt äfvensom ersättning för öfverliggedagar och ytterligare uppehåll, som redan må hafva egt rum, så vida han hos befälhafvaren uppsäger aftalet innan fartyget anträdt resan, som befraktningen angår; är vid lastningstidens utgång icke någon last aflemnad, anses fraktslutet från befraktarens sida häfdt, ändå att uppsägning ej skett. Angår befraktningsaftalet flere resor, erlægges half frakt för första resan och fjerdedels

## Danish Text.

in § 121, no special summons is required.

**124.** When it is so desired by the consigner, the master himself, or the mate on his behalf, shall acknowledge the receipt of the goods as soon as they are delivered. Such acknowledgments shall be returned to the master, when the bill of lading is signed, or in case the goods are discharged ere that time, cfr. § 127.

**125.** The consigner is bound to deliver to the master the necessary documents for the sending off of the goods before the expiration of the time fixed for the delivering of the cargo. Should he fail to do so, and the ship's departure should thereby be delayed, the master can demand indemnity, at least as for demurrage-days, and in lack of payment endorse the bill of lading in this respect.

The master shall take care that he is ready to sail as soon as the cargo is loaded and the necessary documents have been delivered over to him. Should he neglect to do so, or otherwise retard the departure, the charterer has a right to receive compensation for any damage caused thereby, and, according to circumstances, to break off the contract.

**126.** The charterer of a whole ship has a right to break off the contract by paying half the freight together with compensation for demurrage-days and any further delay which may have taken place, provided he gives notice thereof to the master before the ship has departed from the place where the voyage shall begin. If no cargo has been delivered before the expiration of the demurrage-days, the charterer is considered to have broken off the contract. If the contract includes several voy-

## Norwegian Text.

goods to such ships as mentioned in § 121.

**124.** When required by the shipper the master shall himself or through the mate issue receipts for the reception of the goods each time they are delivered. Such receipts shall be returned to the master on signing the bill of lading, or when the goods are discharged previously, see § 127.

**125.** In default of any other agreement the shipper shall, before the expiry of the term fixed for the delivery of the cargo, hand over to the master all the documents and papers required in connection with the conveyance of the goods. If in consequence of his omitting to do so the departure of the ship is delayed, the master shall be entitled to a compensation at least equal to the amount of the demurrage, and may, in default of payment thereof, make an endorsement to that effect on the bill of lading.

The master shall see that he is ready to depart so soon as the cargo has been shipped and the necessary documents and papers delivered to him. If he neglects to do so, or otherwise defers the departure of the ship, the shipper is entitled to compensation for the loss or damage thereby caused to him, and besides, according to circumstances, to withdraw from the contract.

**126.** The charterer of an entire ship shall be entitled to withdraw from the contract on paying half the freight, and compensation for demurrage should the vessel be entitled to it, and for any further delay that might have been caused, provided that he notifies his intention to the master before the ship leaves the place from which the voyage should commence. If no cargo has been delivered before the expiry of the days of demurrage the charterer shall be deemed to have withdrawn

## Swedish Text.

as herein mentioned, shall not apply to ships referred to in Art. 121.

**124.** When loading takes place, the master himself or the mate on his behalf shall issue, at the request of the shipper, a receipt for the goods received, according as delivered. When the master signs the bill of lading such receipts for cargo should be returned to him. In case the goods should be discharged before the bill of lading is made out, such said receipts should be returned when the goods are delivered.

**125.** It shall be the duty of the shipper to furnish the master with all necessary documents respecting the cargo within the time fixed for the loading; should he fail to do so, and the ship's departure be thereby delayed over and above the loading time, the owners of the ship shall be entitled to compensation for the delay, according to the rules laid down in Arts. 120 and 122.

It shall be the duty of the master to take care that the ship can proceed on the voyage as soon as the cargo is on board and the requisite documents have been delivered. If the master neglects to do so, or otherwise delays the commencement of the voyage without valid reason, the charterer shall be entitled to such compensation for damage and loss caused by the delay as may be proved proper by arbitrators, and shall have the right to annul the agreement, should there be cause for so doing.

**126.** A charterer of a whole ship shall have the right to annul the charterparty in consideration of the payment of half the freight, together with compensation for demurrage and any further delay which may have already occurred, provided he gives notice thereof to the master before the ship has commenced the voyage to which the charter refers; should no cargo have been delivered at the expiration of the loading time, the charter shall be considered annulled on the part of the charterer, in spite of no

Fragt for begge, hvis det er Udrejse og Hjemrejse.

men halv Fragt for begge, hvis det er Udreise og Hjemreise.

frakt för enhver af de öfriga; dock att, der aftalet angår endast resa till viss ort och omedelbar återresa derifrån, half frakt skall utgå jemväl för återresan.

Leverer Befragteren ikke den hele betingede Ladning, er Skipperen ikke pligtig at tiltræde Rejsen, medmindre Befragteren udbetaler ham fuld Fragt for det Gods, som ikke forsendes, og derhos Erstatning for de Udgifter, som foranlediges derved, at ikke den hele Ladning leveres, eller stiller Sikkerhed for, hvad han saaledes har at betale. Er nagtet Paakrav Betaling ikke erlagt, ej heller Sikkerhed stillet, inden Udlobet af Overliggedagene, er Skipperen berettiget til at anse Kontrakten som hævet af Befragteren, der har at betale Fragt og Erstatning, som ovenfor nævnt.

Leverer Befragteren ikke den hele betingede Ladning, er Skibsforeren ikke pligtig til at tiltræde Rejsen, medmindre Befragteren udbetaler ham fuld Fragt for det Gods, som ikke forsendes, og derhos Erstatning for de Udgifter, som foranlediges derved, at ikke den hele Ladning leveres, eller stiller Sikkerhed for, hvad han saaledes har at betale. Er nagtet Paakrav Betaling ikke erlagt, ej heller Sikkerhed stillet inden Udlobet af Overliggedagene, er Skibsforeren berettiget til at anse Kontrakten som hævet af Befragteren, der har at betale Fragt og Erstatning som ovenfor nævnt.

Aflemnas icke gods till den i aftalet bestända myckenhet, vare befälhafvaren ej pligtig att anträda resan, innan befraktaren erlagt frakt för det gods, som icke försändes, samt ersatt den kostnad som kan för bortfraktaren uppkomma till följd af befraktarens underlåtenhet att lemna full last, eller ock för bortfraktarens fordran stält säkerhet; har icke, oaktadt anmaning skett, betalning erlagts eller säkerhet blifvit stäld före lastningstidens utgång, ege befälhafvaren anse fraktslutet från befraktarens sida häfdt, och denne gälde frakt och ersättning, som förut är sagdt.

Er Konnossement allerede udfærdiget, bliver § 141 at iagtage.

Er Konnossement allerede udfærdiget, bliver § 141 at iagtage.

Är konnossement å inlastadt gods redan utfärdadt, gällehvad i 141 § sägs.

127. Naar paa Grund af Kontraktens Ophævelse i de Tilfælde, som omhandles i § 126 indladet Gods atter losses, er Befragteren pligtig at godtgøre Skipperen alle Omkostninger ved Indladningen og Udlosningen samt, hvis Skibet opholdes ud over Overliggedagene, at betale ham Erstatning, mindst som for Overliggedage.

127. Naar paa Grund af Kontraktens Ophævelse i de Tilfælde, som omhandles i § 126, indladet Gods atter losses, er Befragteren pligtig til at godtgøre Skibsforeren alle Omkostninger ved Indladningen og Udlosningen samt, hvis Skibet opholdes udover Overliggedagene, at betale ham Erstatning mindst som for Overliggedage.

127. Der i fall, som 126 § omförmäler, på grund af fraktslutets häfvande redan inlastadt gods skall åter lossas, njute bortfraktaren ersättning för alla utgifter för godsets inlastning och lossning, så ock för uppehåll, efter ty i 120 och 122 §§ sägs.

128. Vil Befragter af helt Skib have Kontrakten, efter at Skibet er afgaaet fra det Sted, hvor Rejsen begynder, er han pligtig at betale fuld Fragt samt Erstatning for Overliggedage og yderligere Ophold, som maatte have fundet Sted; dog skulle kun tre Fjerdedele af Fragten betales, hvis Skibet er befragtet til at afgaa til et andet Sted for der at indtage Ladning, og Kontrakten opsiges, inden Skibet afgaar fra Lasteplassen, eller hæves som Følge af, at Befragteren i det i § 126, 2det Stykke, omhandlede Til-

128. Vil Befragter af helt Skib have Kontrakten, efterat Skibet er afgaaet fra det Sted, hvor Rejsen begynder, er han pligtig til at betale fuld Fragt samt Erstatning for Overliggedage og yderligere Ophold, som maatte have fundet Sted; dog skal kun tre Fjerdedele af Fragten betales, hvis Skibet er befragtet til at afgaa til et andet Sted for der at indtage Ladning, og Kontrakten opsiges, inden Skibet afgaar fra Lasteplassen, eller hæves som Følge af, at Befragteren i det i § 126, 2det Stykke omhandlede Tilfælde

128. Vill befraktare af helt fartyg häfva fraktslutet efter det fartyget anträdt den resa, befraktningen angår, vare han pligtig att gälda full frakt äfvensom ersättning för öfverliggedagar och ytterligare uppehåll, som må hafva egt rum; dock skola endast tre fjerdedelar af frakten erläggas, der fartyget befraktats att å annan ort intaga last och aftalet uppsäges innan fartyget lemnat lastningsorten eller återgår till följd af befraktarens underlåtenhet att aflemna last eller att vid ofullständig aflem-

## Danish Text.

ages, half freight shall be paid for the first and one fourth of the freight for the remainder; but half freight for both, if it is an outward and homeward voyage.

Should the charterer not deliver the whole stipulated cargo, the master is not bound to begin the voyage, unless the charterer pays him full freight for the goods which are not delivered, and, besides, reimburses the expenses which are caused by the non-delivery of the whole cargo, or gives security for the amount he is thus bound to pay. If payment, though asked for, is not effected, nor security given, before the expiration of the demurrage-days, the master has a right to consider the contract as broken off by the charterer, who shall pay freight and indemnity as mentioned above.

If a bill of lading has already been drawn up, § 141 is to be observed.

**127.** When, on account of the breaking off of the contract, in the cases mentioned in § 126, loaded goods are again discharged, the charterer is bound to reimburse the master all the expenses caused by the loading and unloading, as well as to pay him compensation, at least the same as for demurrage-days, if the ship should be delayed beyond the days of demurrage.

**128.** If a charterer of a whole ship wishes to break off the contract after the ship has left the place where the voyage begins, he is bound to pay full freight, besides compensation for demurrage-days and any further delay which may have been occasioned. Should, however, the ship have been chartered to go to another place for the purpose of taking in cargo, and notice be given of the breaking off of the contract before the ship has left the loading port, or should the contract be broken

## Norwegian Text.

from the contract. If the parties have contracted for several voyages, one half of the freight shall be paid for the first, and one fourth for the rest, but one half of the freight for both voyages if chartered for a voyage out and home.

If the charterer does not deliver the whole cargo stipulated on, the master is not bound to proceed on the voyage unless the charterer pays him the full freight on the goods not delivered, and, besides, compensation for the expenses caused by his not having delivered the full cargo, or gives security for the amount thus due. If within the expiry of the days of demurrage the amount has not been paid on demand, or security given, the master is entitled to consider the contract as annulled by the charterer, who must then pay freight and compensation according to the preceding rules.

If a bill of lading has already been issued the rules of § 141 shall be applicable.

**127.** If, on account of the revocation of the contract in the instances mentioned in § 126, goods shipped are again discharged, the charterer shall reimburse the master for all expenses incurred in loading and discharging, and, should the ship be detained beyond the days of demurrage, shall pay him compensation amounting to at least that of the demurrage.

**128.** Should the charterer of the entire ship be desirous of withdrawing from the contract after the departure of the ship from the place where the voyage commenced, he shall pay full freight and, moreover, compensation for demurrage or any further detention that may have occurred; but only three fourths of the freight shall be paid if the ship is chartered to proceed to some other place in order there to load, and the contract is annulled before the ship leaves such loading

## Swedish Text.

notice having been given. If the charter refers to several voyages, half freight shall be paid for the first and one quarter of the freight for each of the other voyages referred to; should the agreement however only refer to a voyage to a certain port and thence direct back, half freight shall likewise have to be paid for the return voyage.

If goods are not delivered to the quantity stipulated in the agreement, the master shall not be obliged to commence the voyage before the charterer has either paid freight for the goods not sent, together with the costs which the owners may incur on account of the neglect of the charterer to deliver full cargo, or else has placed security for the owners' claim; if payment, though asked for, is not effected, or security given before the expiration of the time of loading, notwithstanding requisition having been made, the master shall have the right to consider the charter annulled on the part of the charterer, and the latter shall pay freight and compensation as aforesaid.

If a bill of lading has already been made out for the goods loaded, the prescriptions contained in Art. 141 shall be applicable.

**127.** Where goods already loaded must be unloaded on account of the annulling of the charter in any of the cases referred to in Art. 126, the owners are entitled to compensation for all expenses in connection with the loading and unloading of the goods, as well as for delay, in accordance with the regulations contained in Arts. 120 and 122.

**128.** If a charterer of a whole ship wishes to annul the charter-party, subsequent to the ship having commenced the voyage to which the charter refers, he shall be bound to pay freight in full, together with compensation for demurrage and for any additional delay that may have occurred. Should, however, the ship have been chartered to load at another port and notice be given of the annulment of the agreement before the ship has left the loading port, or, if the agreement is cancelled owing

fælde undlader at opfylde sine Forpligtelser. Angaar Kontrakten flere Rejser, erlægges fuld Fragt for Rejse, som allerede er begyndt, halv Fragt for den følgende og en Fjerdedels Fragt for de øvrige; angaar den Rejse til bestemt Sted og umiddelbar Tilbagerejse derfra, skulle tre Fjerdedele af Fragten for begge Rejser erlægges, naar Kontrakten hæves, inden Tilbagerejsen er begyndt.

undlader at opfylde sine Forpligtelser. Angaar Kontrakten flere Reiser, erlægges fuld Fragt for Reise, som allerede er begyndt, halv Fragt for den følgende og en Fjerdedels Fragt for de øvrige; angaar den Reise til bestemt Sted og umiddelbar Tilbagereise derfra, skal tre Fjerdedele af Fragten for begge Reiser erlægges, naar Kontrakten hæves, inden Tilbagereisen er begyndt.

nannde fullgöra hvad enligt 126 § honom åligger. Angår befraktningsaftalet flere resor, erlægges full frakt för resa, som redan begynt, half frakt för den derpå följande resan samt fjerdedels frakt för de öfriga; angår aftalet resa till viss ort och omedelbar återresa derifrån, skola tre fjerdedelar af frakten för begge resorna gäldas, der aftalet återgår innan återresan begynt.

Befragteren kan ikke efter Skibets Afgang fordre Udlosning uden paa et Sted, som Skibet af anden Grund anløber, og maa foruden Fragt, som nævnt, godtgøre Skipperen de særegne Udgifter og Tab, som foranlediges ved Losningen i Mellemhavnen.

Befragteren kan ikke efter Skibets Afgang fordre Udlosning uden paa et Sted, som Skibet af anden Grund anløber, og maa foruden Fragt, som nævnt, godtgjøre Skibsforeren de særegne Udgifter og Tab, som foranlediges ved Losningen i Mellemhavnen.

Befraktaren ege ej fordra att fartyget för godsets utlossning skall anlöpä hamn under resan; anlöpes af annan anledning ort, der lossning kan ske, ege befraktaren der utbekomma godset, men vare pliktig att, efter pröfning af skiljemän, ersätta ej mindre den särskilda kostnad, som för lossning å den ort må uppkomma, än oek den skada och förlust, som genom lossningen må tillskyndas bortfraktaren.

Er Konnossement allerede udfærdiget, bliver § 141 at iagttage.

Er Konnossement allerede udfærdiget, bliver § 141 at iagttage.

Är konnossement å inlastadt gods utfärdadt, gälle hvad i 141 § sägs.

129. Er et Skib befragtet delvis, og alle Befragterne ere enige om at hæve Kontrakten, gælde for enhver af dem Bestemmelserne i §§ 126—128. Ere de ikke alle enige, maa den, som for sin Del vil hæve Kontrakten, betale fuld Fragt samt efter Omstændighederne Overliggedagspenge, og desuden Erstatning for yderligere Ophold og alle Udgifter, som foranlediges ved hans Tilbagetræden. Allerede indladet Gods kan den enkelte Befragter kun forlange udlosset, naar saadant kan ske uden Skade for de øvrige Befragtere ved Forsinkelse af Rejsen eller paa anden Maade, og han er i hvert Fald pligtig at erstatte Skipperen Skade, Tab og Udgifter, som foranlediges ved Udlosningen.

129. Er et Skib befragtet delvis, og alle Befragterne ere enige om at hæve Kontrakten, gjælder for enhver af dem Bestemmelserne i §§ 126 til 128. Er de ikke alle enige, maa den, som for sin Del vil hæve Kontrakten, betale fuld Fragt samt efter Omstændighederne Overliggedagspenge og desuden Erstatning for yderligere Ophold og alle Udgifter, som foranlediges ved hans Tilbagetræden. Allerede indladet Gods kan den enkelte Befragter kun forlange udlosset, naar saadant kan ske uden Skade for de øvrige Befragtere ved Forsinkelse af Rejsen eller paa anden Maade, og han er i hvert Fald pligtig at erstatte Skibsforeren Skade, Tab og Udgifter, som foranlediges ved Udlosningen.

129. Hafva flere befraktat ett fartyg, hvar till viss del, och förena sig samtliga befraktarne om fraktslutets häfvande, vare lag, som i 126, 127 och 128 §§ sägs. Kunna de ieke alla förena sig, gælde den, som vill för sin del häfva fraktslutet, full frakt äfvensom ersättning för öfverliggedagar och ytterligare uppehåll, som må hafva egt rum, i den mån, befraktaren är därför ansvarig; ersätte oek den kostnad, som till följd af fraktslutets häfvande kan för bortfraktaren uppkomma. Inlastadt gods ege befraktare lossa, der det kan ske utan att skada genom resans fördröjande eller annerledes tillskyndas öfrige befraktare; men bortfraktaren njute ersättning för kostnad, skada och förlust, efter ty i 128 § sägs.



## Danish Text.

off owing to the charterer neglecting to meet his engagements, as mentioned in § 126, sect. 2, only three fourths of the freight shall be paid. Should the contract refer to several voyages, full freight shall be paid down for the next one, and one fourth for the remaining voyages. Should the contract refer to a voyage to a definite place and directly back again from this place, three fourths of the freight shall be paid down for both voyages, if the contract is broken off before the homeward voyage is commenced.

The charterer cannot after the departure of the ship demand that discharge of the cargo shall be effected, unless it be at a place at which the ship calls for some other reason, and he must then, besides the freight as mentioned, reimburse the master the special expenses and the loss occasioned by discharging cargo at the intermediate port.

Should the bill of lading already have been made out, § 141 shall be observed.

**129.** Should a ship be chartered in portions, and all the consigners agree as to the breaking off of the contract, the stipulations contained in §§ 126—128 shall apply to each of them. Should they not all be unanimous, he who for his part wishes to break off the contract, must pay full freight, together with compensation for demurrage-days according to circumstances, besides compensation for further delay, and all expenses occasioned by his withdrawal. Every single consigner can only demand goods already loaded to be unloaded, if such can be effected without damage to the rest of the consigners from delaying of the voyage or from any other cause, and he is in every case bound to compensate the master for damage, loss and expenses caused by the unloading.

## Norwegian Text.

place or is cancelled in consequence of the charterer neglecting to fulfil his engagements in those instances mentioned in the second section of § 126. If the contract is for several voyages full freight shall be paid for any voyage already commenced, half freight for the succeeding voyage, and one fourth freight for the remaining voyages. If the contract includes a voyage to a fixed place and an immediate return therefrom, three fourths of the freight shall be paid for both voyages provided the contract is cancelled before the commencement of the return voyage.

After the departure of the ship the charterer cannot claim to have the goods discharged except at a place where the ship is obliged to call for other reasons. In such a case he shall, besides paying the full freight as aforesaid, compensate the master for any loss and expenses caused to him by discharging in such intermediate port.

If a bill of lading has already been issued the rules of § 141 shall be observed.

**129.** If a ship is chartered by several persons, and all the charterers join in withdrawing from the contract, the rules of §§ 126 to 128 shall apply to all of them. If they do not all agree, any charterer withdrawing from the contract must pay full freight, and according to circumstances, demurrage, and, besides, compensation for any further delay, and all expenses caused by his withdrawal from the contract. An individual charterer whose goods have been shipped may only claim to have them discharged when such discharge can take place without detriment to the other charterers from delay to the voyage or from any other cause, and he is in all instances obliged to indemnify the master for all loss or damage and expen-

## Swedish Text.

to the charterer's neglect to deliver cargo, or, in case of incomplete delivery, to his failing to comply with the obligations incumbent upon him in accordance with Art. 126, only three fourths of the freight shall be paid. If the charter-party refers to several voyages, full freight is to be paid for the voyage which has already commenced, half freight for the next following and one quarter of the freight for the remaining voyages. If the agreement refers to a voyage to a certain port and direct back, three quarters of the freight for the two voyages shall be paid, should the agreement be cancelled before the commencement of the return voyage.

The charterer shall have no right to claim that the ship shall call at a port during the voyage for the discharging of the goods. If, for any other reason, the ship calls at a port where discharging can take place, the charterer shall have the right there to obtain the goods, but shall be bound to give such compensation, not only for all extra expenses that the discharging at such port may involve, but also for damage and loss thereby sustained by the owners of the ship, as arbitrators may prove just.

If a bill of lading has been issued, the stipulations contained in Art. 141 shall be in force.

**129.** If several persons have chartered a ship, each to a certain proportion, and all agree as to the annulment of the charter, the stipulations contained in Arts. 126, 127 and 128 shall come into force. If all cannot agree, the person wishing for his part to annul the charter shall pay freight in full together with compensation for demurrage and any additional delay which may have taken place, to the extent to which such charterer is responsible, and shall moreover pay the costs incurred by the owner in connection with the annulment of the charter. Any charterer shall have the right to discharge goods already loaded, provided the other charterers do not thereby incur loss on account of the delay of the voyage or otherwise, but the owner of the ship shall be

130. Befragter, som i Medfør af §§ 123, 126 og 128—129 maa betale fuld Fragt for Gods, der ikke føres frem med Skibet til Bestemmelsesstedet, kan forordre Afdrag for de særegne Udgifter, som i den Anledning blive besparede for Skibet. Medtager Skipperen i Stedet derfor andet Gods, skal Halvdelen af Fragten for dette komme til Afdrag i, hvad Befragteren har at udrede.

131. Den, som gør Arrest eller Udlæg i indladet Gods, kan ikke forordre det udleveret under andre Betingelser end dem, hvorunder Befragteren kunde forlange det ndlosset.

132. Naar Gods er indladet, skal Skipperen eller den, som i hans Sted dertil er bemyndiget, paa Afladerens Begæring udstede Konnossement, der indeholder hans Erkendelse af Modtagelsen og hans Forpligtelse at levere Godset paa Bestemmelsesstedet til rette vedkommende.

Konnossementet skal, foruden Udstederens Underskrift samt Dag og Sted for Udstedelsen, indeholde Angivelse af Skibets Navn, det indladede Gods, Modtager og Bestemmelsessted. Derhos kan enhver af Parterne forlange anført Skipperens Navn, i Tilfælde denne ikke selv har underskrevet, Afladerens Navn, Skibets Hjemsted, om det er Dampskib eller Sejskib, Godsets Art, Beskaffenhed, Vægt, Mængde og Mærker, den betingede Fragt samt Henvisning til Fragtkontrakten i dens Helhed eller til særlige Bestemmelser i samme.

133. Konnossementet bliver at udstede i saa mange Eksemplarer, som Afladeren anser for-

130. Befragter, som i Medfør af §§ 123, 126, 128 eller 129 maa betale fuld Fragt for Gods, der ikke føres frem med Skibet til Bestemmelsesstedet, kan forordre Afdrag for de særegne Udgifter, som i den Anledning bliver besparede for Skibet. Medtager Skibsføreren i Stedet derfor andet Gods, skal Halvdelen af Fragten for dette komme til Afdrag i, hvad Befragteren har at udrede.

131. Den, som gjør Arrest eller Udlæg i indladet Gods, kan ikke forordre det udleveret under andre Betingelser end dem, hvorunder Befragteren kunde forlange det ndlosset.

132. Naar Gods er indladet, skal Skibsføreren eller den, som i hans Sted er bemyndiget dertil, paa Afladerens Begæring udstede Konnossement, der indeholder hans Erkendelse af Modtagelsen og hans Forpligtelse til at levere Godset paa Bestemmelsesstedet til rette Vedkommende.

Konnossementet skal, foruden Udstederens Underskrift samt Dag og Sted for Udstedelsen, indeholde Angivelse af Skibets Navn, det indladede Gods, Modtager og Bestemmelsessted. Derhos kan enhver af Parterne forlange anført Skibsføreren Navn, i Tilfælde denne ikke selv har underskrevet, Afladerens Navn, Skibets Hjemsted, om det er Dampskib eller Sejskib, Godsets Art, Beskaffenhed, Vægt, Mængde og Mærker, den betingede Fragt samt Henvisning til Fragtkontrakten i dens Helhed eller til særlige Bestemmelser i samme.

133. Konnossementet bliver at udstede i saamange Exemplarer, som Afladeren anser for-

130. Är befraktare pliktig att gälda full frakt för gods, som icke med fartyget föres fram till bestämelseorten, ege han åtnjuta afdrag å frakten för de särskilda utgifter, hvilka af sådan anledning varda bortfraktaren besparade; medtager befälhafvaren i stället annat gods, skall af den frakt, som därför betingas, hälften gå i afräkning å befraktarens skuld.

131. Tages inlastadt gods i mät, må det ej lossas under andra vilkor, än befraktaren egt utbekomma detsamma; varder godset utmättningsvis såldt, gälle hvad i 277 § stadgas.

132. När gods är inlastadt, vare befälhafvaren eller den, som i befälhafvarens ställe dertil bemyndigats, pliktig att, på aflastarens begäran, utfärda konnossement, innefattande erkännande om godsets mottagande och förbindelse att å uppgifven ort aflemna godset.

Konnossementet skall innehålla, förutom ort och dag för utfärdandet samt utfärdarens underskrift, uppgift å fartyget, det inlastade godset och bestämelseorten äfvensom angifva, till hvem godset skall i bestämelseorten aflemnas. Der sådant å någondera sidan äskas, skall tillika uppgifvas befälhafvaren, när handlingen icke af denne utfärdats, aflastaren, fartygets hemort, huru vida det är ångfartyg eller segelfartyg, lastens art och beskaffenhet, vikt, mängd och märken samt den betingade frakten, så ock intagas hänvisning till befraktningsaftalet i dess helhet eller i vissa delar.

133. Konnossement skall utfärdas i så många exemplar, som aflastaren finner nödiga;

## Danish Text.

## Norwegian Text.

## Swedish Text.

130. A charterer who, in accordance with §§ 123, 126 and 128—129, must pay full freight for goods that are not conveyed by the ship to the place of destination, can demand a deduction of the special expenses which the ship has saved for this reason. Should the master take along other goods in their stead, one half of the freight agreed upon for such goods shall be deducted from what the charterer has to pay.

131. He who sequesters or distrains loaded goods, cannot demand them discharged under other conditions than those under which the charterer would have a right to demand them unloaded.

132. When goods have been loaded, the master, or the person who in his stead has been empowered to that effect, shall on demand of the consigner issue a bill of lading, containing his acknowledgment of the receipt of the goods and his obligation to deliver the goods at the place of destination to the party concerned.

The bill of lading shall, besides the issuer's signature and the place and date of issue, contain a statement of the ship's name, the goods loaded, the consignee and the place of destination. Moreover, each of the parties can demand that the name of the master be entered, if he has not signed the bill himself, as well as the consigner's name, the port to which the ship belongs, whether it is a steamship or a sailing vessel, the nature, quality, weight, quantity and marking of the goods, the freight agreed upon, and a reference to the contract of affreightment, either to the whole of it or to certain conditions in the same.

133. The bill of lading shall be issued in as many copies as the consigner deems necessary;

ses which may be incurred in the discharge of such goods.

130. Charterers who in pursuance of the rules of §§ 123, 126, 128 or 129, are obliged to pay the full amount of freight on goods which have not been conveyed by the ship to the place of destination, may claim a reduction on the freight of those expenses which the ship has been spared in consequence thereof. If the master ships other goods in their place, one half the freight of such other goods shall be deducted from the amount payable by the charterer.

131. A person who seizes or distrains goods already shipped cannot claim their surrender by delivery under other conditions than those by which the charterer could demand the discharge of such goods.

132. After the goods have been shipped, the master or his proper substitute shall, when required by the shipper, issue a bill of lading containing his acknowledgment of the receipt of the goods and his engagement to deliver the same at the place of destination to the rightful party.

The bill of lading shall be signed by the issuer and contain the date when, and the name of the place where, it has been issued, the name of the ship, the nature of the goods shipped, the name of the receiver of the goods, and the name of the place of destination. Either of the parties may also demand the insertion of the name of the master, and, if he has not signed the bill of lading, the name of the shipper, the name of the place to which the ship belongs, whether it be a sailing ship or a steam ship, the nature, quality, weight, quantity and marks of the goods, the freight stipulated on, and reference to the charter-party in its entirety, or to particular clauses in it.

133. Bills of lading shall be issued to any number the shipper deems sufficient. He

entitled to compensation for all costs, damage and loss, in accordance with the stipulations contained in Art. 128.

130. Any charterer obliged to pay freight in full for goods which are not forwarded by the ship to the place of destination shall have the right to deduct from the freight such particular expenses as for the said reason have been spared the owner of the ship; should the master ship other goods instead, one half of the freight agreed upon for such goods shall be deducted from the charterer's debt.

131. If goods, already loaded, have been sequestered by Order of Court, they can only be discharged subject to the conditions under which the charterer would have had the right to obtain them; should the goods be sold by way of execution, the regulations contained in Art. 277 shall apply.

132. When goods have been loaded, it is the duty of the master or, in his place, the person empowered for the purpose, to issue, at the request of the shipper, a bill of lading containing an acknowledgment of the receipt of the goods and an undertaking to deliver the goods at the place stated.

The bill of lading shall, besides giving the place and the date of issue and bearing the signature of the issuer, also contain a statement respecting the ship, the goods loaded, and the port of destination and, further, to whom the goods are to be delivered at the port of destination. Whenever any of the parties should so require, the name of the master, in case the document is not issued by him personally, and further the shipper's name, the port to which the ship belongs, whether the vessel is a steam or sailing ship, the nature, quality, weight, kind, quantity and marking of the cargo, and the freight agreed upon, should be given. The bill of lading shall further contain reference to the charter-party, either to its full extent or to certain portions thereof.

133. The bill of lading shall be issued in so many copies as the shipper considers necessary.

## Dansk Text.

fornodne; han kan forlange Konnossement udfærdiget for alt det indladede Gods under eet eller særskilt for enkelte Dele. Det paaligger Afladeren at forelægge Skipperen de fornodne Eksemplarer til Underskrift inden den i § 125 bestemte Tid, og Skipperen kan for sig forlange et af Afladeren medundertegnet Eksemplar. Skipperen maa i intet Tilfælde udstede Konnossement for Gods som endnu ikke er indladet.

## Norsk Text.

nodne; han kan forlange Konnossement udfærdiget for alt det indladede Gods under ét eller særskilt for enkelte Dele. Det paaligger Afladeren at forelægge Skibsførerens de fornodne Exemplarer til Underskrift inden den i § 125 bestemte Tid, og Skibsførerens kan for sig forlange et af Afladeren medundertegnet Exemplar. Skibsførerens maa i intet Tilfælde udstede Konnossement for Gods, som endnu ikke er indladet.

## Svensk text.

önskar aflastaren särskilda konnossement å delar af lasten, vare befälhafvaren skyldig att utfärda sådana. Aflastaren åligger att med sin underskrift till rättigheten erkänna ett exemplar af konnossementet, som befälhafvaren behåller. Befälhafvaren må ej underteckna konnossement förrän godset inlastats.

Naar Konnossementet udstedes i flere Eksemplarer, skal Antallet — derunder ikke medregnet det Eksemplar, som overgives til Skipperen — anføres i Teksten, og denne skal i alle være ligelydende. Dog kan Afladeren forlange, at de forskellige Eksemplarer i selve Teksten betegnes som første, andet, tredje o. s. v.

Naar Konnossementet udstedes i flere Exemplarer, skal Antallet — derunder ikke medregnet det Exemplar, som overgives til Skibsførerens — anføres i Teksten, og denne skal i alle være ligelydende. Dog kan Afladeren forlange, at de forskellige Exemplarer i selve Teksten betegnes som første, andet, tredje o. s. v.

Utfärdas konnossementet i flera exemplar, skall hvarje exemplar utmärka, huru många blifvit utfärdade. Samtliga exemplar skola vara af lika innehåll; dock må, der aflastaren det äskar, de särskilda exemplaren i konnossementets text betecknas med särskilda nummer, såsom första, andra, tredje och så vidare.

134. Konnossement kan udstedes til bestemt Person, til bestemt Person eller Ordre, eller til Ihændehaveren; er det udstedt „til Ordre“ alene, forstås derved Afladerens Ordre. Konnossement kan overdrages ved Transport (Endossement) til bestemt Person eller in blanco, medmindre dets Overdragelse ved Ordrene „ikke til Ordre“ eller ved andet udtrykkeligt Forbehold i Konnossementets Tekst er forbudt.

134. Konnossement kan udstedes til bestemt Person, til bestemt Person eller Ordre eller til Ihændehaveren; er det udstedt „til Ordre“ alene, forstås derved Afladerens Ordre. Konnossement kan overdrages ved Transport (Endossement) til bestemt Person eller in blanco medmindre dets Overdragelse ved Ordrene „ikke til Ordre“ eller ved andet udtrykkeligt Forbehold i Konnossementets Text er forbudt.

134. Konnossement må ställas till viss man eller till innehafvaren. Är konnossementet ställt till viss man, må det öfverlåtas till annan, ändå att ej något derom är i konnossementet nämnt. Har utfärdaren genom orden: „icke till order“, eller dylikt, gjort förbehåll mot öfverlåtelse, ege den till hvilken konnossementet öfverlåtes, ej bättre rätt än den till hvilken konnossementet är ställt.

Enhver som, ved Indholdet af Konnossementets Tekst, eller ved en behørig sammenhængende og til ham fortsat Række af Overdragelser eller ved Overdragelse in blanco viser sig at være ret Indehaver af Konnossementet, kan i Kraft af samme fordre Godset udleveret.

Enhver, som ved Indholdet af Konnossementets Text eller ved en behørig sammenhængende og til ham fortsat Række af Overdragelser eller ved Overdragelse in blanco viser sig at være ret Ihændehaver af Konnossementet, kan i Kraft af samme fordre Godset udleveret.

Enhvar, som genom innehåll af konnossementets text eller genom behørig sammanhängande och till honom förtgående följd af öfverlåtelser eller genom öfverlåtelse in blanco visar sig vara rätt innehafvare af konnossementet, ege på grund af detsamma fordra godsets utlemnande.

135. Er der ikke vedtaget nogen bestemt Losseplads i Havnen, kan Ladningsmodtageren fordre, at Skibet henlægges til den Plads, som han anviser, for saa vidt Adgangen der til er åben, og Skibet der kan ligge flot og sikkert; saadan Anvisning maa dog gives ufortøvet efter Skipperens Opfor-

135. Er der ikke vedtaget nogen bestemt Losseplads i Havnen, staar det Skibsførerens frit for at vælge, men kun en Plads, som er sædvanlig Losseplads. Dog har Ladningsmodtageren Ret til at anvisé saadan naar han gör det, forinden Skibet henlægges til Plads, som Skibsførerens har valgt, og denne

135. Är icke viss lossningsplats genom aftal bestämd, ege lastemottagaren enahanda rätt att för lossningen anvisa särskild plats, som, efter ty i 114 § sägs, vid inlastning tillkommer befraktare. Angående lastemottagares rätt att för lossningen fordra fartygets vidare förhållande till annan plats i

## Danish Text.

he can require a bill of lading drawn up so as to comprise all the goods loaded, or special ones prepared for separate portions of the cargo. It is incumbent on the consigner to lay before the master the necessary copies for signature before the time fixed in § 125, and the master can demand for himself a copy with the consigner's signature added. The master must not in any case issue a bill of lading for goods which have not yet been loaded.

If the bill of lading is issued in several copies, the number—without taking into account the copy which is handed over to the master—shall be stated in the text, and all the copies shall be of the same tenor. The consigner can, however, demand the different copies to be marked in the text itself, as first, second, third and so on.

**134.** The bill of lading can be issued to a definite person, to a definite person or order, or to the holder; if issued "to order" alone, it is thereby understood to be the consigner's order. The bill of lading can be made over by transfer (endorsement) to a definite person or in blank, unless its transfer is forbidden by the words "not to order" or other reservations expressed in the text of the bill of lading.

Any person who, according to the text of the bill of lading, or by a duly connected and to him continued series of endorsements, or by an endorsement "in blanco", proves himself to be the proper holder of the bill of lading, can, by virtue of the same, claim the delivery of the goods.

**135.** If no definite place of discharge in the harbour has been fixed by agreement, the consignee can demand that the ship be moored at the place which he designates, provided the passage to that place is open, and the ship can lie afloat and in safety there. Such direction must

## Norwegian Text.

may require a bill of lading to be issued for all the goods together, or separate bills of lading for individual portions thereof. It is the duty of the shipper to present to the master the necessary copies for signature within the time fixed in § 125, and the master may claim a copy for himself signed by the shipper. The master must not in any instance issue a bill of lading for goods which are not yet shipped on board.

When copies of the bill of lading are made out—not including the copy to be handed to the master—a statement of the number issued shall be included in the wording of each of them, and the wording of all copies must be alike. The shipper is however entitled to have the different copies numbered in the wording itself as first, second, third etc.

**134.** A bill of lading may be made out to a named person or to a named person or order, or to the bearer; if issued only "to order" it shall be deemed to signify to the order of the shipper. A bill of lading may be transferred (endorsed) to a named person or in blank, provided such transfer be not prohibited by the clause "not to order", or by another express restriction contained in the text of the bill of lading.

Any person who, from the wording of the bill of lading, or by a consecutive series of endorsements correctly made out in his favour, or by a transfer in blank, proves to be the rightful holder of the bill of lading may, by virtue of the same, claim to have the goods delivered to him.

**135.** If nothing is stipulated as to the place in the port where the ship ought to unload, this shall be left to the option of the master, provided the place selected by him be a usual discharging place. The receiver of the cargo shall, however, be entitled to fix the place if he does so before the

## Swedish Text.

If the shipper wishes to be furnished with separate bills of lading for certain portions of the cargo, the master is bound to issue the bills of lading accordingly. The shipper shall sign one copy of the bill of lading in acknowledgment of its correctness, which copy is kept by the master. The master should not sign the bill of lading before the goods are loaded.

If several copies of the bill of lading are issued, each copy shall contain a statement as to the number issued. All the copies shall be of the same tenor; should the shipper so require, the different copies may, however, be referred to in the bill of lading with different numbers, for instance first, second, third copy and so forth.

**134.** A bill of lading may be issued in favour of a certain person or the holder. If the bill of lading is issued in favour of a certain person, it can be transferred to another, although no provision to that effect has been made in the bill of lading. If the issuer has safeguarded himself against transfer by the words "not to order" or any similar expression, the person to whom the transfer is made shall acquire no better title than the person in whose favour the bill of lading has originally been issued.

Any person proving himself to be the proper holder of a bill of lading, either by the contents thereof, or by a consecutive series of endorsements properly made and finishing in his favour, or by an endorsement in blank, shall have the right, on the strength thereof, to claim the delivery of the goods.

**135.** If no special place of discharge has been fixed by agreement, the consignee shall have the right to appoint a certain place for discharging, similar to the right conferred upon the charterer for loading, according to Art. 114. Regarding the consignee's right to claim the moving of the ship

dring, da Skipperen i andet Fald har Ret til at vælge Pladsen, dog kun en Plads, som er sædvanlig Losseplads. Er der flere Ladningsmodtagere, har den, som er Modtager af over Halvdelen af den til den paa-gældende Havn bestemte Del af Ladningen, samme Ret som Modtageren af hele Ladningen. Hvis flere, som tilsammen ere Modtagere af over Halvdelen af den nævnte Del af Ladningen ere enige, have de Ret til at anvise Pladsen, saafremt dette sker, inden Skibet er henlagt til Plads, som Skipperen har valgt.

er i saa Fald pligtig til at henlægge Skibet til den Plads, som anvises, saafremt Adgangen til samme er aaben, og Skibet der kan ligge flot og sikkert. Er der flere Ladningsmodtagere, er saadan Anvisning kun bindende for Skibsføeren, naar samtlige Modtagere er enige.

hamnen gælle oek hvad i 114 § är för befraktare stadgadt.

Med Hensyn til Skipperens Forpligtelse til videre at forhale Skibet gælder lignende Regel som den, der i § 114 er given for Indladning.

Med Hensyn til Skibsføerens Forpligtelse til videre at forhale Skibet gælder lignende Regel som den, der i § 114 er given for Indladning.

**136.** Ved Losning har Skipperen at aflevere Godset ved Skibets Side, men de øvrige Losningsomkostninger bæres af Modtageren.

**136.** Ved Losning har Skibsføeren at aflevere Godset ved Skibets Side, men de øvrige Losningsomkostninger bæres af Modtageren.

**136.** Vid lossning skall befälhafvaren aflemna godset vid fartygets sida, men öfriga lossningskostnaden bäres af lastemottagaren.

Er Skibet saa dybtgaaende, at det ikke kan komme ind til vedtagen eller, hvis ingen Vedtagelse har fundet Sted, til sædvanlig Losseplads i Havnen, har Skipperen dog at bekoste Godset bragt frem til behørig Losseplads i denne.

Er Skibet saa dybtgaaende, at det ikke kan komme ind til vedtagen eller, hvis ingen Vedtagelse har fundet Sted, til sædvanlig Losseplads i Havnen, har Skibsføeren dog at bekoste Godset bragt frem til behørig Losseplads i denne.

Är genom aftal viss plats bestämd för lossning, men är fartyget så djupgående, att det icke kan förläggas till den plats, som aftalats, skall bortfraktaren bekosta godsets framförande från fartygets sida; lag samma vare, der icke viss lossningsplats aftalats, men fartyget af anledning, som nyss är sagd, icke kan inkomma i den hamn, befraktningsaftalet bestämmes.

**137.** Ladningsmodtageren har Krav paa, at Skibet holdes rede til Losning en vis Tid (Liggedage) uden Godtgørelse og derefter en yderligere Tid (Overliggedage) mod særlig Godtgørelse; dette gælder dog ikke Skibe i saadan Fart, som omhandles i § 121. I Henseende til Underretning om, at Skibet er færdigt til at losse, Beregning af Liggedage og Overliggedage, deres Antal og Godtgørelse for Overliggedage gælder lignende Regler som de, der i §§ 118—120 ere givne for Indladning.

**137.** Ladningsmodtageren har Krav paa, at Skibet holdes rede til Losning en vis Tid (Liggedage) uden Godtgørelse og derefter en yderligere Tid (Overliggedage) mod særlig Godtgørelse; dette gælder dog ikke Skibe i saadan Fart, som omhandles i § 121. I Henseende til Underretning om, at Skibet er færdigt til at losse, Beregning af Liggedage og Overliggedage, deres Antal og Godtgørelse for Overliggedage gælder lignende Regler som de der i §§ 118—120 er givne for Indladning.

**137.** När fartyget är helt och hållet eller till viss del befraktadt, vare befälhafvaren pligtig att lemna lastemottagaren, viss tid till godsets mottagande (lossningstid), dels utan ersättning (liggedagar), dels mot ersättning (öfverliggedagar); dock vare med afseende å fartyg, som i 121 § omförmäles, lag, som der sägs. Angående befälhafvarens skyldighet att underätta lastemottagaren, när fartyget är færdigt att lossa, äfvensom angående antalet af liggedagar och öfverliggedagar, grunden för lossningstidens beräkning och den för öfverliggedagar utgående ersättning gälla hvad i 118—120 §§ är för lastning stadgadt.

## Danish Text.

be given immediately on the master's demand, the latter having otherwise the right to choose the place, which, however, must always be a usual unloading place. If there are several consignees, he who is consignee of more than half of that portion of the cargo which is destined for the port in question, has the same right as the receiver of the whole cargo. If several persons, who together are

## Norwegian Text.

ship is moored at the place selected by the master, who shall, in such a case, be bound to proceed to the place appointed, provided there is due access to it and the ship is there safely afloat. If there are several receivers of the cargo, the appointment of the place shall only be binding on the master if it is agreed to by all the receivers.

## Swedish Text.

to another berth in the harbour for discharging, the regulation contained in Art. 114 with respect to the charterer shall also apply.

With regard to the master's obligation to shift the ship, similar regulations are given as those given for loading in § 114.

**136.** On unloading, the master has to deliver the goods at the ship's side, but the further costs of unloading are to be borne by the consignee.

Should the ship draw so much water, that it cannot come into the place agreed upon, or, if no agreement has been made, to the usual unloading place in the harbour, the master shall defray the expenses of bringing the goods to the proper unloading place of that harbour.

**137.** The consignee can demand that the ship shall be ready for unloading a certain time (lying-days) without compensation, and afterwards for a further period (demurrage-days) on special compensation; this, however, does not apply to ships on such voyages as are mentioned in § 121. With reference to intimation of the ship being ready to unload, the calculation of lying-days and days of demurrage, their number and compensation for demurrage-days, similar regulations are applicable as those given for loading in §§ 118—120.

In respect to the liability of the master to shift the ship subsequently in the port, rules corresponding to those contained in § 114 regarding loading shall apply.

**136.** In discharging the cargo the master shall deliver the goods at the ship's side, but all other expenses of discharging shall be defrayed by the receiver of the cargo.

If the draught of the ship is so great that it cannot get to the place of unloading stipulated on, or, if no discharging berth is stipulated on, to the usual unloading place in the port, the master shall defray the expenses of conveying the goods to a proper place of discharge in the port.

**137.** The receiver of the goods may demand that the master shall keep the ship ready to unload during a certain period (lay days) without compensation, and subsequently during a further space of time (days of demurrage) on paying a compensation. This rule shall not apply to the ships employed in such trades as are mentioned in § 121. In respect to the notification to be given of the ship being ready to discharge, the calculation of the lay days and the days of demurrage, the number of such days and the demurrage payable, similar rules to those contained in §§ 118 to 120 with regard to loading shall be applicable.

compensation be payable on account of days on demurrage, the stipulations contained in Arts. 118—120 with regard to loading shall apply.

**136.** When discharging, the master shall deliver the goods along-side the ship, but all other expenses connected with the unloading shall be borne by the consignee.

If a certain place for discharging has been agreed upon, but the ship's draught of water is so deep that she cannot be berthed in the place agreed upon, the owner of the ship shall defray the expenses of conveying the goods from the ship's side. The same law shall apply in case no fixed discharging place has been agreed upon, and the vessel for the aforesaid reason cannot enter the harbour stipulated in the charterparty.

**137.** When the whole ship or a certain portion thereof is chartered, it is the duty of the master to allow the consignee a certain time for the reception of the cargo (discharging time), partly free of charge, i. e. Laying days, partly in consideration of compensation being paid, i. e. Days on demurrage. With regard to such ships as are referred to in Art. 121, the enactment of the said article shall, however, apply. With regard to the master's duty to inform the consignee when the ship is ready to discharge, and also as to the number of laying days and days on demurrage and to the principles, according to which the time for discharging should be calculated and com-

Sker Losning og Lastning i Sammenhæng for samme Persons Regning, begynde Overliggedage ikke, førend de for Losning og Lastning tilsammen bestemte Liggedage ere forløbne.

138. Den, som skal modtage Stykgods, har paa Skipperens Tilsigelse at indfinde sig for at faa Godset udleveret. Hvis Modtager ikke er kendt eller ikke kan træffes, sker Tilsigelse paa den Maade, som i § 118 er foreskrevet for lignende Tilfælde.

Stykgods, som befordres med saadant Skib, som omhandles i § 121, kan Skipperen uden særlig Tilsigelse straks losse.

139. Paa Bestemmelsesstedet har Skipperen at udlevere Godset til den, der melder sig med et saadant Eksempplar af Konnossementet, som efter § 134 berettiger ham til at fordr Godset udleveret. Dette Eksempplar skal, naar Losningen er færdig, udleveres til Skipperen med paategnet Tilstaaelse for Godsets Modtagelse, og for at sikre sig dette kan Skipperen, forinden han paabegynder Losningen, forlange Konnossementet deponeret. Efterhaanden som Losningen skrider frem, kan Skipperen forlange Afskrivning paa Konnossementet eller særskilte Modtagelsesbeviser.

140. Melder der sig flere Modtagere, som i Henhold til forskellige Eksemplarer af Konnossementet kunne gøre Krav paa Godset, maa Skipperen ikke udlevere det til nogen af dem, men han skal, saafremt Parterne ikke enes om Valget af en Modtager, til hvem Godset kan losses og overleveres, oplægge det under sikker Forvaring og derom uden Ophold underrette Parterne. Dette gælder imidlertid ikke, naar de forskellige Eksemplarer af Konnossementet paa den i § 133, sidste Stykke, angivne Maade ere betegnede med Nummere, idet Skipperen da skal udlevere

Sker Losning og Lastning i Sammenhæng for samme Persons Regning, begynder Overliggedage ikke, førend de for Losning og Lastning tilsammen bestemte Liggedage er forløbne.

138. Den, som skal modtage Stykgods, har paa Skibsførerens Tilsigelse at indfinde sig for at faa Godset udleveret. Hvis Modtager ikke er kjendt eller ikke kan træffes, sker Tilsigelse paa den Maade, som i § 118 er foreskrevet for lignende Tilfælde.

Stykgods, som befordres med saadant Skib, som omhandles i § 121, kan Skibsføreren uden særlig Tilsigelse straks losse.

139. Paa Bestemmelsesstedet skal Skibsføreren udlevere Godset til den, der melder sig med et saadant Exemplar af Konnossementet, som efter § 134 berettiger ham til at fordr Godset udleveret. Dette Exemplar skal, naar Losningen er færdig, udleveres til Skibsføreren med paategnet Tilstaaelse for Godsets Modtagelse, og for at sikre sig dette kan Skibsføreren forlange Konnossementet deponeret, forinden han paabegynder Losningen. Efterhaanden som Losningen skrider frem, kan Skibsføreren forlange Afskrivning paa Konnossementet eller særskilte Modtagelsesbeviser.

140. Melder der sig flere Modtagere, som i Henhold til forskellige Exemplarer af Konnossementet kan gjøre Krav paa Godset, maa Skibsføreren ikke udlevere det til nogen af dem, men han skal, saafremt Parterne ikke enes om Valget af den Modtager, til hvem Godset kan losses og overleveres, oplægge det under sikker Forvaring og uden Ophold underrette Parterne derom. Dette gjælder imidlertid ikke, naar de forskellige Exemplarer af Konnossementet paa den i § 133, sidste Stykke angivne Maade er betegnede med Nummere, idet Skibsføreren da skal udlevere

Eger lossning och lastning rum i ett sammanhang för samma persons räkning, må öfverliggedagar ej beräknas förrän liggedagarna för hvardera gått till ända.

138. Mottagare af stykegods skall genast på befälhafvarens tillsägelse afhemta godset i den ordning, befälhafvaren bestämmer; är mottagaren icke känd eller icke att träffa, sker tillsägelse på sätt 118 § för dylikt fall stadgar.

Stykegods, som befordras med fartyg af den beskaffenhet, 121 § omförmäler, ege befälhafvaren utan särskild tillsägelse utlossa.

139. I bestämmelseorten skall befälhafvaren utlemna lasten till den, hvilken är innehafvare af sådant exemplar af konnossement, som enligt 134 § berättigar honom att fordra godsets utlemnande. Sedan godset till lastemottagaren aflemnats, skall konnossementet, med åteknadt bevis om godsets aflemnande, återställas till befälhafvaren.

Der befälhafvaren det äskar, ällige lastemottagaren att, innan lossningen börjar, sätta konnossementet i taka händer att vid lossningens afslutande hållas befälhafvaren till handa, så ock att i mån af lossningens fortgång göra anteckning å konnossementet om hvad som aflemnats eller derom meddela särskildt bevis.

140. Anmäla sig flere behörige innehafvare af konnossement, må befälhafvaren icke till någon af dem utlemna godset, utan ällige honom att för vederbörande lastemottagares räkning lemna det i förvar till den gode man, parterne utse, eller, der de je kunna enas om sådan, upplägga godset under säker vård och derom ofördröjligen underrätta parterne; dock skall, der de särskilda exemplaren äro betecknade med särskilda nummer, som i 133 § sägs, godset utlemnas till den, som är innehafvare af det exemplar, hvilket är utmärkt med lägsta nummer.



## Danish Text.

Should discharging and loading be effected uninterruptedly for the same person's account, the days of demurrage do not begin before the lying-days stipulated for each operation separately have expired.

138. Receivers of general cargo shall, on the master's request, present themselves to fetch the goods. If the receiver is not known or cannot be found, the summons shall be made in the manner prescribed in § 118 for similar cases.

The master can immediately, without special summons, unload general cargo, which is conveyed by such ships as mentioned in § 121.

139. The master shall at the port of destination deliver the goods to the person who presents himself with such copy of the bill of lading as, according to § 134, entitles him to claim the delivery of the goods. This copy shall, as soon as the unloading is completed, be delivered to the master with a written acknowledgment of the receipt of the goods, and to make sure of this, the master can demand that the bill of lading be deposited, before he begins to discharge. As the unloading proceeds, the master can demand gradual cancelling of the bill of lading or special receipts.

140. Should several consignees present themselves, who, pursuant to various copies of the bill of lading, have a claim on the goods, the master must not deliver the goods to any of them, but he shall, if the parties do not agree as to the choice of a consignee to whom the goods may be unloaded and delivered, warehouse the goods under safe custody, and without delay inform the parties of it. This does not, however, apply in case the various copies of the bill of lading, in the manner prescribed in the last part of § 133, are marked with num-

## Norwegian Text.

If discharging and loading takes place consecutively for the account of one and the same person, the days of demurrage shall not commence until the expiry of the aggregate number of lay days for loading and unloading.

138. The person who is to receive goods (general cargo) shall, when served with notice to do so by the master, attend to receive such goods. If the receiver is not known, or cannot be found, such notice shall be given according to the rules contained in § 118 in respect to similar cases.

If a general cargo is conveyed in such ships as are mentioned in § 121, the master shall be entitled to unload the goods without giving any special notification.

139. The master shall at the place of destination deliver the goods to the person who presents himself to him with such a copy of the bill of lading as, in conformity with § 134, entitles the person to claim the delivery of the goods. On completion of the unloading such copy shall be given up to the master endorsed with an acknowledgment of the receipt of the goods; and, in order to secure this being done, the master may demand to have the bill of lading deposited with a third party before he commences to discharge. The master may demand to have an acknowledgment for the receipt of the goods endorsed on the bill of lading, or some other acquittance for the same, step by step during the progress of the discharge.

140. Should several persons claim the goods as holders of various copies of the bill of lading, the master must not deliver the goods to any of them, but he shall, if the parties do not agree upon appointing a receiver to whom the goods can be discharged and delivered, store the same in safe keeping and inform the parties thereof without delay. This rule, however, shall not be applicable if the different copies of the bill of lading are numbered as described in the last part of § 133, in which case the master shall deliver the goods to the holder of that

## Swedish Text.

If discharging and loading take place uninterruptedly for account of the same person, the days on demurrage are not to be counted before the laying days stipulated for each operation separately have expired.

138. Consignees of general cargo shall immediately, at the request of the master, fetch away the goods in such order as the master directs; if the consignee is unknown or cannot be found, notice is to be given in the manner stipulated in Art. 118.

The master shall have the right to discharge, without giving special notice, general cargo carried in ships of the description mentioned in Art. 121.

139. The master shall deliver the cargo at the port of destination to the person who holds such copy of the bill of lading as entitles him to claim the delivery of the goods according to Art. 134. When the goods have been delivered to the consignee, the bill of lading shall be returned to the master with a certificate proving the delivery of the goods.

Should the master so require, the consignee shall be bound to deposit the bill of lading in the hands of a disinterested person, previous to the commencement of the discharging, in order to be available to the master when the discharging is completed. The consignee shall also, at the request of the master of the ship, either note on the bill of lading, as the discharging proceeds, what goods have been delivered, or issue special certificates to that effect.

140. If several persons duly holding the bill of lading should present themselves, the master shall not deliver the goods to any of them, but it shall be his duty to deliver the goods, for account of the proper consignee, in the care of the trustee appointed by the parties, or, if they cannot all agree to the appointment, safely to store the goods and to inform the parties without delay of his having done so. In case the different copies are numbered separately, as mentioned in Art. 133, the goods shall, however, be delivered up to the person holding the bill

Godset til den, som har det laveste Nummer af dem, der have meldt sig.

**141.** Uden for Bestemmelsesstedet maa Skipperen, selv om Fragtkontrakten hæves eller Rejsen afbrydes, ikke udlevere Godset, medmindre samtlige af ham udstedte Eksemplarer af Konnossementet tilbageleveres jfr. dog § 167. Dette gælder imidlertid ikke, naar Konnossementet indeholder Forbud imod Overdragelse, og heller ikke, naar de forskellige Eksemplarer paa den i § 133, sidste Stykke, angivne Maade ere betegnede med Nummere; i sidste Tilfælde kan rette Ihædehaver af det som „første“ betegnede Eksemplar forlange Godset udleveret, uagtet de andre Eksemplarer ikke ere komne til Stede.

**142.** Bortfragteren bærer Ansvar for al Beskadigelse og Forminskelse, som Godset lider fra dets Modtagelse til dets Aflevering, medmindre det gøres antageligt, at Skaden eller Forminskelsen er bevirket ved Sønlykke, Opbringelse eller anden ulykkelig Hændelse, som det ikke har staaet i Skippers eller Mandskabs Magt at afværge, eller at den er en Følge af Mangler ved Godsets Indpakning, eller af indre Bedærvelse, Svind, sædvanlig Udlækning, Dyrs Død eller i øvrigt af Godsets egen Beskaffenhed.

Er Skade foranlediget derved, at Skibet ikke har været i behørig Stand til Rejsen, er Bortfragteren uden Ansvar, naar Skibets Mangler ikke kunde opdages trods al anvendt Omhu.

**143.** Indlades Gods, som udkræver særlig Omhu og Forsigtighed i Behandlingen, maa dette opgives for Skipperen og tydelig anmærkes paa Godset. Forsømmes det, kan ingen Erstatning kræves for Skade, som alene kunde være undgaaet ved Anvendelse af saadan Omhu og Forsigtighed.

Penge, Værdipapirer eller andre Kostbarheder erstattes

Godset til den, som har det laveste Nummer af dem, der har meldt sig.

**141.** Udenfor Bestemmelsesstedet maa Skibsføreren, selv om Fragtkontrakten hæves eller Rejsen afbrydes, ikke udlevere Godset, medmindre samtlige af ham udstedte Exemplarer af Konnossementet tilbageleveres; jfr. dog § 167. Dette gjælder imidlertid ikke, naar Konnossementet indeholder Forbud mod Overdragelse, og heller ikke, naar de forskellige Exemplarer paa den i § 133, sidste Stykke angivne Maade er betegnede med Nummere; i sidste Tilfælde kan rette Ihædehaver af det som „første“ betegnede Exemplar forlange Godset udlevet, uagtet de andre Exemplarer ikke ere komne tilstede.

**142.** Bortfragteren bærer Ansvar for al Beskadigelse og Forminskelse, som Godset lider fra dets Modtagelse til dets Aflevering, medmindre det gøres antageligt, at Skaden eller Forminskelsen er bevirket ved Sjøulykke, Opbringelse eller anden ulykkelig Hændelse, som det ikke har staaet i Skibsførens eller Mandskabets Magt at afværge, eller at den er en Følge af Mangler ved Godsets Indpakning eller af indre Bedærvelse, Svinding, sædvanlig Udlækning, Dyrs Død eller iøvrigt af Godsets egen Beskaffenhed.

Er Skade foranlediget derved at Skibet ikke har været i behørig Stand til Rejsen, er Bortfragteren uden Ansvar, naar Skibets Mangler ikke kunde opdages trods al anvendt Omhu.

**143.** Indlades Gods, som udkræver særlig Omhu og Forsigtighed i Behandlingen, maa dette opgives for Skibsføreren og tydelig anmærkes paa Godset. Forsømmes det, kan ingen Erstatning kræves for Skade som alene kunde være undgaaet ved Anvendelse af saadan Omhu og Forsigtighed.

Penge, Værdipapirer eller andre Kostbarheder erstattes ik-

**141.** Annanstädes än i bestämmelseorten må befälhafvaren icke, ändå att fraktslutet häfves innan resan begynt, eller denna senare afbrytes, utlemna godset utan att af konnossement, som ej innehåller förbehåll mot öfverlåtelse, samtliga utfärdade exemplar till honom återställas; dock vare, der exemplaren betecknats med särskilda nummer, som i 133 § sägs, innehafvaren af det exemplar, hvilket betecknats såsom det första, berättigad att få godset till sig utlemnadt, ändå att öfriga exemplar icke återställas.

**142.** Har, efter det gods blifvit till inlastning mottaget oeh innan det aflemnats, godset förkommit, skadats eller minskats, vare bortfraktaren därför ansvarig, der ej antagas må, att förlusten, skadan eller minskningen tillkommit genom sjöolycka, uppbringning eller annan olyckshändelse, som det ej stått i befälhafvarens eller besättningens magt att afvärja, eller orsakats af bristfällighet i godsets inpackning eller af dess egen beskaffenhet att lätt förderivas eller minskas, såsom när spanmål sammanbrinner, flytande varor afdunsta eller utläka, eller när kreatur dö.

Har skada uppkommit derigenom att fartyget vid resans början varit i bristfälligt skick, vare bortfraktaren ej skyldig att ersätta skadan, der bristen icke kunnat upptäckas, oaktadt all omsorg blifvit använd.

**143.** Inlastas gods, som fordrar särskild vård, skall sådant för befälhafvaren uppgifvas och å godset tydligen utmärkas; försummas det, må ersättning ej fordras för skada, som icke utan sådan vård kunnat avoidas.

Penningar, värdepapper eller dyrbarheter ersättas icke, så

## Danish Text.

bers, the master being in such case bound to deliver the goods to him who presents himself with the lowest number.

141. The master must not deliver the goods at any other place than the port of destination, even if the contract is broken off or the voyage is interrupted, unless all the copies of the bill of lading issued by him are returned, *cfr.*, however, § 167. This, however, does not apply, if the bill of lading forbids transfers, nor if the different copies, in the manner mentioned in the last portion of § 133, are marked with numbers. In the last case the holder of the copy marked "first" can demand the delivery of the goods, although the other copies have not been exhibited.

142. The freighter is responsible for all damage and deterioration which the goods may suffer from the time they have been received until they are delivered, unless it may be admitted that the damage or the deterioration has been caused by shipwreck, seizure by enemies, or other accident, which it has not been in the power of the master or the crew to prevent, or that it is a consequence of defective or insufficient packing of the goods, or of interior perishing, shrinking, the usual leakage, death of animals, or otherwise of the nature of the cargo itself.

Should damage be occasioned because the ship has not been in proper repair for the voyage, the freighter shall not be responsible when the defectiveness was not discovered in spite of all care bestowed.

143. Should goods be loaded which demand special care and attention, it must be stated to the master, and conspicuously marked on the goods. Should this be neglected, no compensation can be demanded for damage which only could have been avoided by such care and caution.

Money, bonds or other articles of value are not com-

## Norwegian Text.

copy which bears the lowest number.

141. Except at the place of destination the master may not, even should the contract be cancelled or the voyage discontinued, deliver the goods to any person unless all the copies of the bill of lading issued by him are returned, (see moreover § 167). This rule shall, however, not apply if the bill of lading contains a prohibition to its transfer, or if the various copies are numbered in the manner described in the last section of § 133, in which latter instance the rightful holder of the copy marked "number one" may claim to have the goods delivered up notwithstanding that the other copies have not come to hand.

142. The owner of the ship shall be responsible for all loss or damage or diminution sustained by the goods from the time of shipment to that of their delivery, unless it is made apparent that the loss or damage or diminution has been caused by casualties at sea, capture or other unfortunate accidents, which it has not been within the power of the master or the crew to prevent, or by defective packing of the goods, or by their spontaneous decay, shrinkage, ordinary leakage, death of animals, or otherwise from the nature of the goods.

If the damage has been caused by the ship not being in a proper condition for the voyage, the owner of the ship shall not be responsible, provided that, though proper care has been taken, the defects could not be discovered.

143. If goods requiring to be treated with particular care and precaution are sent for shipment, the master must be informed thereof, and the goods be distinctly marked accordingly. In default thereof, no compensation can be demanded for any damage or loss that could only have been avoided through the exercise of such particular care and precaution.

For the loss of money, valuable documents, or other

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of lading bearing the lowest number.

141. Except at the port of destination, the master shall not deliver up the cargo, unless all the copies of such bills of lading as contain no clause against transfer are duly returned to him. This rule applies also in cases where the charterparty has been annulled before the commencement of the voyage, or the voyage been subsequently discontinued. Should, however, the copies be marked with separate numbers as mentioned in Art. 133, the holder of the copy marked as the first shall be entitled to have the goods delivered to him, although the other copies are not restored.

142. The owner of the ship shall be responsible for all loss, damage or diminution of goods, after having received the goods for loading and previous to the discharging thereof, unless the loss, damage or reduction may be supposed to have been caused by casualty, seizure by enemies, or any other accident beyond the control of the master and crew; or else from defective or insufficient packing, or from the nature of the cargo itself of being easily deteriorated or destroyed, as for instance in the case of the heating and combustion of grain cargoes, the leaking or evaporation of liquids, or the death of animals.

Should the cause of the damage sustained be the defective condition of the ship at the commencement of the voyage, the owners of the ship shall not be liable to pay compensation, when the defectiveness was not discoverable in spite of all care being taken.

143. A statement shall be made to the master of goods loaded which require special care and attention, and such requirement shall be conspicuously marked on the goods; failing this, compensation cannot be claimed for damage unavoidable in the absence of such care as aforesaid.

No compensation is given for monies, securities or valu-

ikke, medmindre de ere blevne udtrykkelig angivne som saadanne og deres Værdi opgivet.

144. Konnossementet er Grundlaget for Retsforholdet mellem Skipperen og Ladningsmodtageren, og overensstemmende med dets Indhold skal Ladningen afleveres til denne. Bestemmelser i Fragtkontrakten, der ikke ere optagne i Konnossementet, kunne derfor ikke gøres gældende mod Ladningsmodtageren, uden for saa vidt Konnossementet henviser til dem. En Henvisning til Fragtkontrakten med Hensyn til Fragten, f. Eks. ved Ordene „Fragt efter Certeparti“, omfatter ikke tillige Kontraktens Bestemmelser om Liggedage, Overliggedage og Godtgørelsen for disse.

Skyldige Overliggedagspenge og anden Erstatning i Anledning af Indladningen kan Skipperen ikke forlange betalt af Ladningsmodtagerne, medmindre derom er taget Forbehold paa Konnossementet.

145. Skipperen er i Medfør af § 144 Modtageren ansvarlig for Rigtigheden af, hvad der i Konnossementet opgives om Godset. Forsendes dette i lukket Kasse eller Indpakning, saa at Indholdet er Skipperen ubekendt, eller anføres i Konnossementet Maal, Vægt eller Tal, uden at Godset ved Indladningen af Skipperen er modtaget efter Maaling, Vejning eller Telling, kan han derom gøre Anmærkning paa Konnossementet, og han er da fri for Ansvar, saafremt han ikke ved Indladningen har set, at Anforslerne vare urigtige, eller ved Anvendelse af almindelig Opmærksomhed havde maattet forstaa det.

146. Naar Godsets Tilstand eller Indpakningens Forsvarlighed ikke kan kontrolleres ved Indladningen, kan Skipperen ved Paategning paa Konnossementet, f. Eks. „fri for Læk, Bræk eller Skade“, forbeholde Fritagelse for Ansvar efter § 142. Saadant Forbehold fritager dog ikke for Ansvar, hvis

ke, medmindre de er blevne udtrykkelig angivne som saadanne, og deres Værdi opgivet.

144. Konnossementet er Grundlaget for Retsforholdet mellem Skibsforeren og Ladningsmodtageren, og overensstemmende med dets Indhold skal Ladningen afleveres til denne. Bestemmelser i Fragtkontrakten, der ikke er optagne i Konnossementet, kan derfor ikke gøres gældende mod Ladningsmodtageren, uden forsaavidt Konnossementet henviser til dem. En Henvisning til Fragtkontrakten med Hensyn til Fragten, f. Ex. ved Ordene „Fragt efter Certeparti“, omfatter ikke tillige Kontraktens Bestemmelser om Liggedage, Overliggedage og Godtgørelsen for disse.

Skyldige Overliggedagspenge og anden Erstatning i Anledning af Indladningen kan Skibsforeren ikke forlange betalt af Ladningsmodtageren, medmindre derom er taget Forbehold paa Konnossementet.

145. Skibsforeren er i Medfør af § 144 Modtageren ansvarlig for Rigtigheden af, hvad der i Konnossementet opgives om Godset. Forsendes dette i lukket Kasse eller Indpakning, saa at Indholdet er Skibsforeren ubekendt, eller anføres i Konnossementet Maal, Vægt eller Tal, uden at Godset ved Indladningen er modtaget efter Maaling, Veining eller Telling, kan Skibsforeren gøre Anmærkning derom paa Konnossementet, og han er da fri for Ansvar, saafremt han ikke ved Indladningen har seet, at Anforslerne vare urigtige, eller ved Anvendelse af almindelig Opmærksomhed havde maattet forstaa det.

146. Naar Godsets Tilstand eller Indpakningens Forsvarlighed ikke kan kontrolleres ved Indladningen, kan Skibsforeren ved Paategning paa Konnossementet (f. Ex. „fri for Læk, Bræk eller Skade“) forbeholde Fritagelse for Ansvar efter § 142. Saadant Forbehold fritager dog ikke for Ansvar, hvis

vida de icke blifvit såsom sådana angifna och värdet uppgifvits.

144. Konnossementet bestämmer rättsförhållandet mellan bortfraktaren och lastemottagaren, och skall förty i öfverensstämmelse med konnossementet lasten till den sistnämnde utlemnas.

144. Konnossementet omfattar icke tillige Kontraktens Bestemmelser om Liggedage, Overliggedage och Godtgørelsen for disse.

Betalning för öfverliggedagar eller för annat uppehåll, som vid godsets inlastning egt rum, må ej affordras lastemottagaren, der ej konnossementet utvisar, att fordringen är ogulden.

145. Inlastas gods, som är slutet i packor, kistor eller kärl, så att innehållet är befälhafvaren obekant, eller har gods, som uppgifvits till mått, vikt eller antal, icke af befälhafvaren mottagits efter mätning, vägning eller räkning, ege befälhafvaren derom göra anmärkning i konnossementet; har sådan anmärkning skett, vare bortfraktaren utan ansvarighet, der uppgiften angående godsets art och beskaffenhet eller dess myckenhet finnes oriktig, så vida icke vid inlastningen utrönts eller med användande af vanlig uppmärksamhet bort kunna utrönas, att uppgiften var oriktig.

146. Har vid godsets inlastning icke kunnat säkert utrönas, om godset var i oskadadt skick och försedt med behörig beklädnad, ege befälhafvaren i konnossementet genom orden „fri från läck, bräck eller skada“, eller genom annat dylikt förbehåll, fritaga bortfraktaren från ansvarighet för all skada,

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pensated for, unless they are expressly declared as such and their value stated.

**144.** The bill of lading is the basis of the legal relations between the master and the consignee, and the cargo shall be delivered to the latter in conformity with its contents. Conditions in the contract of affreightment, which are not inserted in the bill of lading, cannot be urged against the consignee, unless in case the bill of lading refers to them. A reference to the contract of affreightment relative to the freight, e. g. by the words "Freight according to charter-party", does not comprise the conditions of the contract with reference to lying-days, demurrage-days and payment for these.

The master cannot demand money which is due for demurrage-days, or other compensation with relation to the loading, to be paid by the consignee, unless there is a clause in the bill of lading to that effect.

**145.** In pursuance of § 144 the master is answerable to the consignee for the correctness of what is stated in the bill of lading in reference to the goods. Should the goods be dispatched in closed cases or packings, so that the master is unacquainted with the contents, or should measure, weight or number be entered in the bill of lading, without the goods having been received by the master according to any measuring, weighing or counting, the master shall have the right to comment upon such fact in the bill of lading, and he is then free from responsibility, provided that he has not on loading seen that the statements were incorrect, or could have seen it by applying ordinary attention.

**146.** When the condition of the goods or the carefulness of the packing cannot be controlled during the loading of goods, the master can by inserting in the bill of lading the following words: "free from leakage, breakage, or damage, or the like", reserve immunity from responsibility according

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valuables, no compensation shall be payable unless the nature of such articles and their value have been expressly stated.

**144.** The bill of lading shall be deemed to be the basis of the legal relations between the master and the receiver of the cargo, and the master shall deliver the goods in conformity with the terms of the bill of lading. If any of the stipulations of the charter-party are not contained in the bill of lading, such stipulations can, consequently, not be enforced against the receiver, unless reference is made to them in the bill of lading. If, in the bill of lading, reference is made to the freight, for instance, by the words "freight as per charter-party", this shall not extend to the stipulations of the charter-party concerning the calculation of and payment for lay days and days of demurrage.

Demurrage, and other compensation that has become due in connection with the loading, cannot be claimed by the master from the receiver, unless a special reservation to such effect has been inserted in the bill of lading.

**145.** The master shall be responsible to the receiver, under the rules of § 144, for the correctness of the description of the goods contained in the bill of lading. If the goods are shipped in closed cases or packages and the contents are unknown to the master, or if, in the bill of lading, the measure, weight or number is stated without the goods having, on their reception on board, been measured, weighed or numbered, the master shall be entitled to endorse the bill of lading to that effect, by which he shall be released from responsibility, provided that, on the shipment of the goods, he did not perceive that the entries were incorrect, or, by the observation of ordinary care, necessarily understand that such was the case.

**146.** When the condition of the goods or the security of the packing cannot be checked on loading, the master may, by endorsing the bill of lading (with, for instance "not accountable for leakage, breakage, or damage or loss"), reserve exemption from the liability incurred under § 142.

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ables, unless they have been declared as such, and the value stated.

**144.** The bill of lading shall constitute the right between the owners of the ship and the consignee, and the cargo is consequently to be delivered to the latter in conformity with the bill of lading.

instance, by the words "freight as per charter-party", this shall not extend to the stipulations of the charter-party concerning the calculation of and payment for lay days and days of demurrage.

The payment for demurrage and any other delay which may have occurred during the loading, cannot be claimed from the consignee, unless the bill of lading shews that the claim has not been settled.

**145.** If goods contained in packages, chests, or vessels are so loaded that the contents are unknown to the master, or if goods to a certain stated weight, measure or number have been received by the master without due measuring, weighing or counting, the master shall have the right to endorse such fact on the bill of lading. If such endorsement has been made, the owner of the ship shall be free from responsibility, should the statement as to description, quality or number of the goods be found incorrect, unless the statement was at the time of loading found, or with usual attention ought to have been found, incorrect.

**146.** Should it have been impossible, when loading, to ascertain accurately whether the goods were in an undamaged state and properly packed, the master shall have the right, by inserting in the bill of lading the following words "free from leakage, breakage or damage", or by any other

Beskadigelsen eller Formindskelsen maa antages at være opstaaet paa saadan Maade, at Rederiet er ansvarligt derfor i Medfør af § 142.

Beskadigelsen eller Formindskelsen maa antages at være opstaaet paa saadan Maade, at Rederiet er ansvarligt derfor i Medfør af § 142.

som icke bevisligen tillkommit af sådan anledning, att denne jemlikt 142 § bör därför ansvara.

147. Indlades Gods, som tydelig kan ses at være beskadiget eller uforsvarlig indpakket, paaligger det Skipperen udtrykkelig at gøre Bemærkning derom i Konnossementet. Undlader han dette, er han ansvarlig over for Ladningsmodtageren, selv om der i Konnossementet er taget saadant Forbehold som i § 146 nævnt.

147. Indlades Gods, som tydelig kan sees at være beskadiget eller uforsvarlig indpakket, paaligger det Skibsføreren udtrykkelig at gjøre Bemærkning derom i Konnossementet. Undlader han dette, er han ansvarlig overfor Ladningsmodtageren, selv om der i Konnossementet er taget saadant Forbehold som i § 146 nævnt.

147. Inlastas gods, som tydeligen kan skönjas vara skadadt eller illa beklädt, åligge befälhafvaren att sådant i konnossementet uttryckligen anmärka. Underlåter han det, må förhållandet ej åberopas till bortfraktarens fritagande från ansvarighet för skada, ändå att i konnossementet tecknats sådant förbehåll, som i 146 § omförmäles.

148. Findes der ved Skibets Ankomst til Lossestedet Grund til at antage, at der er sket Skade paa Ladningen, eller at noget af den er gaaet tabt, kan Ladningsmodtageren lade afholde Besigtigelsesforretning, under hvilken der, for saa vidt Skade forefindes, tillige bliver at afgive Skøn angaaende Aarsagen.

148. Findes der ved Skibets Ankomst til Lossestedet Grund til at antage, at der er sket Skade paa Ladningen, eller at noget af den er gaaet tabt, kan Ladningsmodtageren lade afholde Besigtigelsesforretning, under hvilken der, forsaavidt Skade forefindes, tillige bliver at afgive Skøn angaaende Aarsagen.

148. Innan lastemottagaren mottager godset ege han, till utrönande af dess tillstånd, låta godset besigtigas af besigtigningsmän, som i 332 § andra stycket sägs.

Vil en Ladningsmodtager, som uden foregaaende Besigtigelse har faaet Godset udleveret, senere gøre Indsigelse med Hensyn til dets Tilstand, maa han inden Udgangen af næste Sogndag efter Godsets Udlevering begjære Skøn afholdt snarest muligt. Forsømmer han dette, kan han ikke fordre Erstatning, medmindre det godtgøres, at Beskadigelsen eller Formindskelsen er bevirket ved Fejl eller Forsømmelse af Rederen eller nogen, for hvem denne hæfter ifølge § 8.

Vil en Ladningsmodtager, som uden foregaaende Besigtigelse har faaet Godset udleveret, senere gjøre Indsigelse med Hensyn til dets Tilstand, maa han inden Udgangen af næste Sogndag efter Godsets Udlevering begjære Skøn afholdt snarest muligt. Forsømmer han dette, kan han ikke fordre Erstatning, medmindre det godtgjøres, at Beskadigelsen eller Formindskelsen er bevirket ved Svig, Forsømmelse eller Ugatsomhed af Rederen eller af Nogen, for hvem denne hæfter ifølge § 8.

Har gods utan förutgången besigtning blifvit utlemnadt till lastemottagaren och vill han göra anmärkning angående godsets tillstånd, åligge honom att före utgången af nästa söken dag efter utfäendet anordna besigtning å godset; försummas det, ege han ej fordra ersättning för skada eller minskning, som icke bevisligen tillkommit genom fel eller försummelse af bortfraktare, befälhafvare eller besättning.

Om tiden för besigtningen bör befälhafvaren underrättas; anordnar befälhafvaren sjelf, jemlikt 42 §, besigtning å godset, bör, så vida ske kan, lastemottagaren kallas att dervid närvara. Finnes vid besigtningen gods skadadt eller minskadt, skola besigtningmännen meddela utlåtande angående den orsak, som må antagas hafva vållat skadan eller minskningen.

149. Naar der i Medfør af § 142 skal gives Erstatning for manglende eller beskadiget Gods, eller naar Gods, som i Medfør af § 49 under Rejsen er solgt til Skibets Behov, skal erstattes af Bortfragteren, bliver

149. Naar der i Medfør af § 142 skal gives Erstatning for manglende eller beskadiget Gods, eller naar Gods, som i Medfør af § 49 under Rejsen er solgt til Skibets Behov, skal erstattes af Bortfragteren, bliver

149. Skall jemlikt 142 § bortfraktare ersätta felande, skadadt eller minskadt gods, eller skall han utgifva ersättning för gods, som blifvit jemlikt 49 § såldt för fartygets behof, bestämmes ersättningen efter ty

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to § 142. Such reservation, however, does not free him from responsibility, if the damage or diminution must be supposed to have been caused in such a manner that the ship-owners are responsible in accordance with § 142.

147. Should goods be loaded, which can be plainly seen to be damaged or not carefully packed, it is the duty of the master to expressly endorse such fact on the bill of lading. Should he omit to do so, he is answerable to the consignee, even if in the bill of lading such reservation has been made as is mentioned in § 146.

148. Should there, on the ship's arrival at the place of unloading, be any reason to suppose that damage has been sustained by the cargo, or that some of the cargo has been lost, the consignee can cause a survey to be made, under which, in case of damage being discovered, the surveyors also must give their opinions as to the cause of it.

If the goods have been delivered to the consignee without previous survey, and he wishes later on to enter a complaint with reference to the condition of the same, he must, before the expiration of the next working-day after the delivery of the goods, request a survey to be made as soon as possible. If he neglects this, he cannot demand compensation unless it is proved that the damage or diminution is caused by any fault or neglect on the part of the ship-owner or anybody for whom the ship-owner is responsible according to § 8.

149. When compensation, according to § 142, is to be given for missing or damaged goods, or when goods, sold for the requirements of the ship during the voyage, according to § 49, are to be compensated

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Such reservation, however, does not relieve him from responsibility if the damage or diminution must be presumed to have arisen in such a manner that the owners are responsible for it in pursuance of § 142.

147. If goods are shipped which are manifestly in a damaged condition, or not properly packed, it is the express duty of the master to endorse the bill of lading to that effect. In default thereof, he shall be responsible to the receiver of the cargo, even if such reservation has been made in the bill of lading as is referred to in § 146.

148. If on the arrival of the ship at the discharging place there is reason to believe that the cargo has been damaged, or that any part of it has been lost, the receiver of the cargo may have a survey held, at which, if any damage be discovered, the surveyors ought to pronounce an opinion as to the causes thereof.

If the receiver of a cargo who, without previous survey, has had the goods delivered to him wants, subsequently, to raise a protest in respect to the condition of the goods, he must, within the expiration of the first working day after the delivery of the goods, call for a survey to be held at the earliest possible opportunity. In default thereof, he cannot claim any indemnification, unless he proves that the damage or diminution has been occasioned by some fraud, misconduct or negligence on the part of the owners or any person for whom they are responsible under § 8.

holding the survey; if the survey, in conformity with Art. 42, the consignee should, if possible, be invited to be goods are found damaged or declare their opinion as to what reason may be supposed to have caused such damage

149. When, according to § 142, compensation shall be awarded for missing or damaged goods, or when, according to § 49, the owners are obliged to give compensation for goods sold during the voyage for the

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clause to that effect, to hold the owner of the ship free from responsibility for all damage, the cause of which cannot be proved to be such that the latter in accordance with Art. 142, should therefor be held responsible.

147. If goods are loaded which clearly shew damage or bad packing, it is the duty of the master distinctly to endorse such fact on the bill of lading. If the master neglects to make such endorsement, the fact cannot be invoked as a reason for freeing the owners of the ship from responsibility for damage, even if such reservation as referred to in Art. 146 has been endorsed on the bill of lading.

148. Before receiving the goods, the consignee has the right to cause the goods to be examined by surveyors in order to ascertain their condition as mentioned in Art. 332, sec. 2.

If goods have been delivered to the consignee without previous survey, and the consignee wishes to remark upon the condition of such goods, it shall be his duty to call a survey before the expiration of the working day next following the day of delivery; failing this, he shall have no right to claim compensation for such damage or diminution as cannot be proved to have been caused by any fault or neglect on the part of the owner, the master or the crew of the ship.

The master should be informed about the time for master himself institutes the survey. If, at the survey, diminished, the surveyors shall what reason may be supposed or diminution.

149. When the owner, in accordance with Art. 142, has to make good any damage, deficiency or diminution of the goods, or has to pay compensation for goods sold for the benefit of the ship in accord-

Erstatningen at bestemme efter Reglerne i §§ 200 og 201.

Erstatningen at bestemme efter Reglerne i §§ 200 og 201.

i 200 och 201 §§ stadgas angående ersättande af gods i gemensamt haveri.

150. Har Skipperen taget Gods om Bord uden at have truffet Aftale om Fragtens Størrelse, erlægges Fragt efter, hvad der paa Indladningstiden var gangbar Fragt paa Indladningsstedet. Er der af Gods, hvormod Aftale har fundet Sted, indladet mere end aftalt, erlægges derfor Fragt i Forhold til den betingede.

150. Har Skibsføreren taget Gods ombord uden at have truffet Aftale om Fragtens Størrelse, erlægges Fragt efter, hvad der paa Indladningstiden var gangbar Fragt paa Indladningsstedet. Er der af Gods, hvormod Aftale har fundet Sted, indladet mere end aftalt, erlægges derfor Fragt i Forhold til den betingede.

150. Har befälhafvare tagit gods ombord utan att aftal skett om fraktens belopp, erlægges frakt efter hvad vid tiden för inlastningen var gångbar frakt å lastningsorten. Har af gods, derom aftal skett, mer inlastats, än aftaladt var, erlægges därför frakt efter enahanda grund, som för det gods, aftalet angick.

151. For Gods, som ikke findes i Behold ved Rejsens Slutning, erlægges ingen Fragt, medmindre det er tabt som Folge af dets egen naturlige Beskaffenhed (jfr. § 142), eller af Mangler ved Indpakningen eller af anden Feil eller Forsømmelse fra Afladerens Side, eller det under Rejsen er solgt for Ejernes Regning.

Er Fragt forud betalt for Gods, hvorfor Fragt efter det anførte ikke bliver at erlægge, kan den fordres tilbage, naar ikke andet er forbeholdt.

151. For Gods, som ikke findes i Behold ved Reisens Slutning, erlægges ingen Fragt, medmindre det er tabt som Folge af sin egen naturlige Beskaffenhed (jfr. § 142), eller af Mangler ved Indpakningen eller af anden Feil eller Forsømmelse fra Afladerens Side, eller det under Reisen er solgt for Eierens Regning.

Er Fragt forud betalt for Gods, hvorfor Fragt efter det Anførte ikke bliver at erlægge, kan den fordres tilbage, naar ikke Andet er forbeholdt.

151. För gods, som icke finnes i behåll vid resans slut, utgår icke frakt, så vida icke godset förlorats till följd af sin egen beskaffenhet att lätt förderfvas eller till följd af bristfällig inpackning eller eljest till följd af aflastarens vållande, eller godset blifvit under resan såldt för egarens räkning.

Är frakt på förhand betald för gods, för hvilket befraktaren, efter ty nu är sagdt, icke är pligtig att gälda frakt, skall förskottet återbäras, der ej annat förbehåll skett.

152. Flydende Varer har Modtageren Ret til at overlade som Betaling for Fragten, naar mere end Halvdelen findes at være udlækket. Denne Ret, som gælder for hvert enkelt Kar, maa imidlertid gøres gældende, forinden Modtageren har faaet det udleveret, og bortfalder desuden, naar Varen er kommen om Bord i brøstfældig eller uforsvarlig Beholder, og Skipperen derom har gjort særlig Bemærkning paa Konnossementet, jfr. § 147.

152. Flydende Varer har Modtageren Ret til at overlade som Betaling for Fragten, naar mere end Halvdelen findes at være udlækket. Denne Ret, som gælder for hvert enkelt Kar, maa imidlertid gøres gældende, forinden Modtageren har faaet det udleveret, og bortfalder desuden, naar Varen er kommen ombord i brøstfældig eller uforsvarlig Beholder, og Skibsføreren har gjort særlig Bemærkning derom paa Konnossementet, jfr. § 147.

152. Käril med flytande varor må egaren öfverlåta för frakten, der mer än hälften af innehållet saknas. Denna rätt, som gäller hvarje särskildt käril, må icke utöfvas efter det kärilet till mottagaren aflemnats och ege ej rum, der kärilet vid inlastningen varit bristfälligt eller illa beklädt och befälhafvaren, der konnossement utfärdats, om förhållandet gjort anmärkning, på sätt i 147 § sägs.

153. Bortfragteren bærer alle Udgifter og Omkostninger, som ere forbundne med Rejsen fra Ladningens Modtagelse til dens Afleverelse paa Bestemmelsesstedet. Saaledes vedkomme f. Eks. Skibsaftgifter, Karantæneomkostninger, Bugserpenge o. l. ikke Befragteren.

153. Bortfragteren bærer alle Udgifter og Omkostninger, som er forbundne med Rejsen fra Ladningens Modtagelse til dens Afleverelse paa Bestemmelsesstedet. Saaledes vedkommer f. Eks. Skibsaftgifter, Karantæneomkostninger, Bugserpenge o. l. ikke Befragteren.

153. Bortfraktaren skall vidkännas alla skeppsumgälder, bogserings-, karantäns- och andra dylika kostnader, som äro förbundna med resan från lastningsorten till lossningsorten; och må förty godtgörelse därför ej affordras befraktaren.

154. Ved at modtage Godset bliver Ladningsmodtageren for-

154. Ved at modtage Godset bliver Ladningsmodtageren for-

154. Mottagandet af godset medför för mottagaren förplig-



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for by the freighter, the amount of compensation shall be determined according to the regulations in §§ 200 and 201.

**150.** If the master has taken goods on board without having agreed on the amount of the freight, freight shall be paid according to what was current freight at the port of loading at the time at which the goods were loaded. Should goods, about which an agreement has been made, be loaded in larger quantity than agreed upon, freight shall be paid for such goods in the same proportion as for the goods for which the agreement has been made.

**151.** For goods which are not forthcoming at the end of the voyage, no freight shall be paid unless it is a result of their own natural condition (cfr. § 142), or they have been lost on account of bad packing or any other fault or neglect on the part of the consigner, or they have been sold during the voyage for the owner's account.

Should freight have been paid in advance for goods for which, according to what has been stated, freight is not to be paid, such advance can be demanded back, unless some special provision has been made.

**152.** In case of liquid goods the receiver has a right to surrender them as payment for the freight, if more than half of the liquid is found to have leaked out. This right, which applies to every separate vat, must, however, be urged before the receiver has had the goods delivered, and shall not hold good, if the receptacles containing the liquids were in a dilapidated and unwarrantable condition when loaded, and the master has made a notice to that effect in the bill of lading (cfr. § 147).

**153.** The freighter (shipowner) shall bear all expenses and costs connected with the voyage from the receiving on board of the cargo until its delivery at the port of destination. Thus, for instance, harbour dues, costs of quarantine, towage and the like are not to be borne by the charterer.

**154.** In receiving the goods the consignee incurs the lia-

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requirements of the ship, such compensation shall be computed according to the rules of §§ 200 and 201.

**150.** If the master has shipped goods, without making an agreement in respect to the freight to be paid, the freight shall be calculated at the current rates of freight prevailing at the time and place of loading. If the rate of freight has been settled, but more goods have been shipped than contracted for, the amount of freight to be paid on the surplus shall be calculated in proportion to that agreed upon.

**151.** No freight shall be payable for goods not on hand at the end of the voyage, unless the loss of the goods has been occasioned by their own natural qualities (see § 142), or by defective packing or other fault or negligence on the part of the shipper, or if, during the voyage, the goods have been sold for the account of their owner.

If freight has been paid in advance for goods on which, according to the rules contained above, no freight shall be payable, repayment may be claimed, provided it is not otherwise stipulated.

**152.** Liquid substances, when more than half has escaped by leakage, may be renounced by the receiver as payment for freight. But this right, which applies to each individual container, must be established before the receiver has had the goods delivered to him, and, moreover, becomes void when the wares have been shipped in dilapidated or defective containers, and the master has made an endorsement to that effect on the bill of lading. See § 147.

**153.** The owners of the ship shall pay all charges and expenses connected with the voyage from the time the cargo has been received until its delivery at the place of destination. The freighter is, accordingly, not liable for shipping dues, quarantine expenses, towage etc.

**154.** On reception of the goods, the receiver is bound

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ance with Art. 49, the amount of the compensation shall be fixed in conformity with the rules laid down in Arts. 200 and 201, respecting compensation for goods in general average.

**150.** Should goods have been received on board by the master, but the amount of freight not been agreed upon, the freight ruling in the port of loading at the time of loading shall have to be paid. Should, in case of an agreement having been made, more goods be loaded than agreed upon, freight shall be paid for such goods upon the same terms as for the goods for which the agreement has been made.

**151.** Freight shall not be paid for goods which do not exist at the end of the voyage, unless they have disappeared in consequence of their perishable nature, or in consequence of bad packing, or otherwise through the shipper's fault, or have been sold during the voyage for account of their owner.

Should freight have been paid in advance for goods, for which the charterer is not bound to pay any freight according to the preceding stipulation, such advance shall have to be refunded, unless some special provision has been made.

**152.** Receptacles containing liquid goods may be abandoned by their owner in lieu of freight when more than half the contents are missing. This right, which applies to each separate vessel, cannot be claimed after the vessel has been delivered to the consignee and shall not hold good, if the receptacles were out of order or badly packed when loaded, and the master has, in the manner prescribed in Art. 147, made a note to that effect on the bill of lading in case such has been issued.

**153.** The owner of the ship shall pay all shipping dues, towage, quarantine and other similar expenses connected with the voyage from the loading port to the port of discharge, and consequently, for such charges compensation cannot be claimed from the charterer.

**154.** In receiving the goods, the consignee incurs the lia-

pligtet til at betale Fragt og hvad Sipskeren i øvrigt maatte have af fordr af ham i Medfor af Konnossementet eller andet Dokument, i Henhold til hvilket Leveringen sker.

pligtet til at betale de Krav — Fragt, Overliggedagspenge osv. — som Skibsføreren maatte have i Medfor af Konnossementet eller andet Dokument, i Henhold til hvilket Leveringen sker.

telse att gälda frakt samt hvad bortfraktaren eljest eger att fordra af befraktaren enligt konnossement eller annan handling, enligt hvilken godset mottages.

155. Skipperen er ikke pligtig at udlevere Godset, førend Modtageren betaler eller deponerer, hvad han efter § 154 har at udrede, saa og Erstatning for Overliggedage eller andet Ophold ved Løsningen, Havaribidrag og hvad der i øvrigt maatte paahvile Godset, jfr. § 276. Hvad saaledes deponeres, er Skipperen, naar Godset er udleveret, berettiget til at hæve med Forbehold af Modtagerens Ret til i Tilfælde af Tvist at sikre sig ved Arrest eller Forbud. Er Belobet af Havaribidrag endnu ikke bestemt, maa Gods ikke holdes tilbage derfor, naar Modtageren stiller Sikkerhed.

155. Skibsføreren er ikke pligtig til at udlevere Godset, førend Modtageren betaler eller deponerer, hvad han efter § 154 har at udrede, saavel som Erstatning for Overliggedage eller andet Ophold ved Løsningen, Havaribidrag, og hvad der i øvrigt maatte paahvile Godset, jfr. § 276. Hvad saaledes deponeres, er Skibsføreren, naar Godset er udleveret, berettiget til at hæve med Forbehold af Modtagerens Ret til i Tilfælde af Tvist at sikre sig ved Arrest eller Forbud. Er Belobet af Havaribidrag endnu ikke bestemt, maa Gods ikke holdes tilbage derfor, naar Modtageren stiller Sikkerhed.

155. Befälhafvaren vare ej pligtig att utlemna godset innan lastemottagaren guldit de i 154 § omförmälda fordringar äfvensom ersättning för öfverliggedagar och annat uppehåll vid lossningen, så ock haveribidrag samt annan fordran, för hvilken godset må häfta, eller ock i allmänt förvar eller hos enskild man, som af befälhafvaren godkännes, nedsatt fordringsbeloppet att af befälhafvaren lyftas efter godsets aflemnande. För ännu icke fastställda haveribidrag må gods ej kvarhållas, om lastemottagaren för dem ställer säkerhet.

Bestemmelserne i nærværende Paragraf gælde ogsaa, naar Gods begæres udlosset paa Indladningssted eller i Mellemhavn.

Bestemmelserne i nærværende Paragraf gjælder ogsaa, naar Gods begjæres udlosset paa Indladningsstedet eller i Mellemhavn.

Hvad nu stadgats vare ock gällande, der lossning af gods eger rum i lastningsorten eller under resan.

156. Hvis den, til hvem Ladningen er bestemt, vægrer sig ved at modtage den, eller hvis Modtageren ikke er kendt eller ikke at finde, har Skipperen saa vidt muligt straks at underrette Afladeren derom. Melder behørig Modtager sig ikke saa betimelig, at Ladningen kan være lossat inden Overliggedagens Udlob, eller Stykgods udleveret til den af Skipperen i Medfor af § 138 bestemte Tid, skal Skipperen losse og oplægge Godset under sikker Forvaring. Undlader Ladningsmodtageren at opfylde sine Forpligtelser efter § 155, eller forholder han Løsningen saaledes, at den ikke kan være tilendebragt i rette Tid, har Skipperen Ret til at losse og oplægge Godset som nævnt.

156. Hvis den, til hvem Ladningen er bestemt, vægrer sig ved at modtage den, eller hvis Modtageren ikke er kjendt eller ikke at finde, har Skibsføreren saavidt muligt straks at underrette Afladeren derom. Melder behørig Modtager sig ikke saa betimelig, at Ladningen kan være lossat inden Overliggedagens Udlob eller Stykgods udleveret til den af Skibsføreren i Medfor af § 138 bestemte Tid, skal Skibsføreren losse og oplægge Godset under sikker Forvaring. Undlader Ladningsmodtageren at opfylde sine Forpligtelser efter § 155, eller forholder han Løsningen saaledes, at den ikke kan være tilendebragt i rette Tid, har Skibsføreren Ret til at losse og oplægge Godset som nævnt.

156. Vägrar lastemottagare att mottaga lasten, eller är mottagare icke känd eller icke att träffa, åligge befälhafvaren att, der det lämpligen kan ske, om förhållandet genast underrätta aflastaren; har icke någon, som till lastens mottagande är behörig, anmält sig så tidigt, att lossningen kan himna afslutas före lossningstidens utgång eller, der befraktningen angår styckegods, ega rum å den af befälhafvaren bestämda tid, låte befälhafvaren lossa godset oeh för vederbörande lastemottagares räkning upplägga det under säker vård. Underlåter lastemottagaren att fullgöra hvad enligt 155 § för godsets utfående åligger honom, eller uppehåller han eljest fartyget för lossningen, så att denna ej kan ega rum i rätt tid, ege befälhafvaren lossa godset oeh upplägga det, som nyss är sagdt.

Naar Gods saaledes oplægges, har Skipperen derom at underrette den, til hvem det er be-

Naar Gods saaledes oplægges, har Skibsføreren derom at underrette den, til hvem det er

Upplägges godset, underrätta befälhafvaren derom lastemottagaren, der denne är känd oeh

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bility to pay freight and what else the master can demand of him in accordance with the bill of lading or any other document, in virtue of which the delivery takes place.

155. The master is not bound to deliver the goods before the consignee has paid freight, or deposited what he, according to § 154, shall pay, and also compensation for demurrage-days or other delay during the unloading, average contribution, or what may be further incumbent on the goods, *cfr.* § 276. What is thus deposited, the master has a right to take, when the goods have been delivered, with the proviso that the consignee has a right, in case of litigation, to make sure of it by arrest or prohibition. If the amount of average contribution is not yet fixed, goods may not be retained on that account, provided the consignee gives security.

The regulations in the present paragraph (Article) shall also be applied, if goods are required to be unloaded at the place of loading or at an intermediate port.

156. If the person for whom the cargo is destined refuses to receive it, or if the consignee is not known, or not to be found, the master shall, where practicable, immediately inform the consigner of the fact. Should no person entitled to receive the cargo present himself in such time that the cargo can be unloaded before the expiration of the days of demurrage, or general cargo delivered to the time fixed by the master according to § 138, the master shall discharge and warehouse the goods under safe keeping. Should the consignee neglect to fulfil his obligations according to § 155, or should he retard the unloading in such a manner that it cannot be finished in right time, the master has a right to unload and warehouse the goods in the manner aforesaid.

When goods are warehoused in this way, the master shall inform the person for whom

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to pay the claims, such as freight, demurrage etc., which may be held by the master under the bill of lading or other document, in pursuance of which delivery takes place.

155. The master need not deliver the goods before the receiver pays or deposits the amount due by him according to § 154, besides demurrage or compensation for any other delay caused in unloading the ship, average contribution and other claims which may fall on the cargo, *see* § 272. On delivering up the goods the master shall be entitled to draw the amount thus deposited, the right of the receiver to protect himself in the event of dispute, by means of seizure or interdiction, being reserved. If the settlement of an average contribution is still pending, the goods must not be detained on that account if sufficient security is given by the receiver.

The rules of this paragraph (Article) shall also be applicable when the unloading of goods is demanded at the place of loading, or in an intermediate port.

156. If the person to whom the cargo is sent refuses to receive the goods, or if the receiver is not known or cannot be found, the master ought at once, if possible, to inform the shipper thereof. If no person qualified to receive the goods appears in time to have the cargo unloaded before the expiry of the days of demurrage, or general cargo delivered up at the time fixed by the master according to § 138, the master shall have the cargo unloaded and stored in safe keeping. If the receiver of the cargo omits to discharge the duties incumbent on him according to § 155, or if he delays the unloading of the ship so that it cannot be completed within the proper time, it shall be lawful for the master to unload and store the goods as aforesaid.

When goods are thus warehoused the master shall inform the person for whom they are

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bility to pay freight, and whatsoever the owner of the ship shall have the right to claim from the charterer according to the bill of lading or any other document on the strength of which the goods have been received.

155. The master shall not be obliged to deliver the goods before the consignee has either settled the claims mentioned in Art. 154 and paid compensation for demurrage and any other delay in the discharging, as well as average contribution and any other claim chargeable on the goods, or else deposited publicly or in the hands of a private person, to be approved by the master, the amount of the claim to be levied by the master subsequent to the delivery of the goods. For average contribution, the amount of which has not been definitely fixed, goods shall not be retained, provided the consignee gives security for the amount.

The above enactment shall also apply where discharging of goods takes place at the port of loading or during the voyage.

156. Should the consignee refuse to receive the cargo, or should he be unknown or impossible to find, it is the duty of the master, where practicable, immediately to inform the shipper of the fact. If no person entitled to receive the cargo presents himself in such time as to allow the discharging to be finished before the expiration of the discharging time, or, should the charter-party refer to general cargo, to take place at the time appointed by the master, the latter shall cause the goods to be discharged and safely stored for account of the respective consignees. If the consignee fails to fulfil the duties incumbent upon him in order to obtain possession of the goods, according to Art. 155, or otherwise detains the ship whilst being discharged so that the discharging cannot take place in proper time, the master shall have the right to discharge and store the goods in the manner aforesaid.

In case of storing the goods, the master shall inform the consignee of the measure taken,

stemt. Er Modtager ikke kendt eller ikke at træffe, gives Underretning paa den Maade, som i § 118 er foreskrevet for lignende Tilfælde.

For ethvert Ophold nd over Overbittedagene, som foranlediges ved Ladningens Oplægelse eller paa anden Maade uden Skyld fra Skibets Side, har Skipperen Krav paa fuld Erstatning, mindst som for Overbittedage.

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For ethvert Ophold udover Overbittedagene, som foranlediges ved Ladningens Oplægelse eller paa anden Maade uden Skyld fra Skibets Side, har Skibsforeren Krav paa fuld Erstatning mindst som for Overbittedage.

tillstådes å lossningsorten, men kungörelse det eljest på sätt 118 § för dylikt fall stadgar.

Varder befälhafvaren för godsets uppläggning eller eljest för lossningen utan eget vållande uppehållen utöfver lossningstiden, njute bortfraktaren ersättning för all skada och förlust, hvilken ersättning i händelse af tvist skall bestämmas af skiljemän och ej

må sättas lägre än för öfverliggerdag.

157. Naar Gods oplægges saaledes som i §§ 140 og 156 omhandlet, er Skipperen berettiget til ved offentlig Auktion at lade sælge saa meget deraf, som udfordres til at dække de i § 155 nævnte Fordringer foruden Told og Omkostninger.

158. Naar Skipperen har udleveret Godset til Modtageren, kan han ikke gøre noget Krav mod Befragteren for de Beløb, som Modtageren var pligtig at betale; dog har han Ret til hos Befragteren at indtale, hvad denne vilde blive beriget med paa Skipperens Bekostning, hvis ethvert Krav bortfaldt. Er Godset derimod ikke blevet udleveret, og Skipperens Fordringer ikke fyldestgøres ved dets Salg, er Befragteren ansvarlig for det manglende Beløb.

159. Enhver af Parterne kan uden at give nogen Erstatning hæve Fragtkontrakten, naar for Skibets Afgang fra det Sted, hvor Rejsen skal begynde,

enten Krig udbræder, som gør Skib eller Ladning ufri, eller Skibet belægges med Embargo,

eller Afgangshavnen eller Bestemmelseshavnen bliver blokeret, eller Godsets Udførsel fra hin eller Indførsel til denne bliver forbudt,

eller Skibets Rejse eller Godsets Forsendelse hindres ved nogen anden Foranstaltning af offentlig Myndighed.

157. Naar Gods oplægges, saaledes som i §§ 140 og 156 omhandlet, er Skibsforeren berettiget til ved offentlig Auktion at lade sælge saa meget deraf, som udfordres til at dække de i § 155 nævnte Fordringer foruden Told og Omkostninger.

158. Naar Skibsforeren har udleveret Godset til Modtageren, kan han ikke gjøre noget Krav mod Befragteren for de Beløb, som Modtageren var pligtig til at betale; dog har han Ret til hos Befragteren at indtale, hvad denne vilde blive beriget med paa Skibsforerens Bekostning, hvis ethvert Krav bortfaldt. Er Godset derimod ikke bleven udleveret, og Skibsforerens Fordringer ikke fyldestgøres ved dets Salg, er Befragteren ansvarlig for det manglende Beløb.

159. Enhver af Parterne kan uden at give nogen Erstatning hæve Fragtkontrakten, naar for Skibets Afgang fra det Sted, hvor Reisen skal begynde,

enten Krig udbræder, som gjør Skib eller Ladning ufri, eller Skibet belægges med Embargo,

eller Afgangshavnen eller Bestemmelseshavnen bliver blokeret, eller Godsets Udførsel fra hin eller Indførsel til denne bliver forbudt,

eller Skibets Reise eller Godsets Forsendelse hindres ved nogen anden Foranstaltning af offentlig Myndighed.

157. Varder gods upplagdt af anledning, som i 140 eller 156 § sägs, ege befälhafvaren låta genom offentlig auktion sälja så mycket af godset, att, utom tull och öfriga omkostnader, de i 155 § omförmälda fordringar dermed betäckas.

158. Utlemnas gods till lastemottagarens förfogande, ege bortfraktaren ej vidare talan mot befraktaren för fordran, som bort af mottagaren gäldas; dock stånde honom öppet att hos befraktaren utsöka hvad denne till bortfraktarens skada skulle vinna, om fordringen uppbörde. Har befälhafvaren icke utlemnat godset men finnes det vid försäljning icke förslå till fordringens gäldande, vare befraktaren ansvarig för bristen.

159. Om före fartygets afgång från den hamn, der resan skall börja, fartyget eller godset genom utbrott af krig blifver ofritt, fartyget beläggas med embargo, den hamn, der resan skall börja, eller den, dit den är stäld, genom blockad stänges, det gods, befraktningen angår, förbjödes till utförsel i aflastningsorten eller till införsel i bestämmelseorten, eller fartygets resa eller godsets försändning genom annan åtgärd af högre hand hindras; då äge såväl befälhafvaren som befraktaren rätt att häfva fraktslutet; och drage hvar sin kostnad och skada.

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the goods are destined of it. If the consignee is not known or not to be found, information shall be given in the manner prescribed in § 118 for similar cases.

For every day beyond the demurrage-days which is occasioned by the warehousing of the cargo or otherwise, without fault on the part of the ship, the master is entitled to full compensation, at least the same as for demurrage-days.

**157.** If goods are warehoused in such manner as mentioned in §§ 140 and 156, the master has a right to sell by public auction as much of the goods as is required to cover the claims mentioned in § 155, besides custom duties and other expenses.

**158.** When the master has delivered the goods to the consignee, he has no claim on the charterer for the amounts which the consignee ought to have paid; he has, however, a right to claim from the charterer whatever profit the latter would make at the master's expense, if all claims ceased to exist. Should the cargo not have been delivered, and the master's claims are not covered by its sale, the charterer shall be responsible for the amount deficient.

**159.** Any of the parties can, without giving any compensation, break off the contract, if previous to the departure of the ship from the place where the voyage is to begin, either

war breaks out, which renders the ship or cargo unfree, or embargo is laid on the ship

or the port of departure or destination is blockaded, or the export of the goods from that port or import to this port is forbidden,

or the ship's voyage or the forwarding of the goods are hindered by any other measure of the authorities.

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destined thereof. If the receiver is not known or cannot be found, such notice shall be given in the manner prescribed by the rules of § 118 in respect to similar cases.

For any delay, not attributable to the ship, beyond the days of demurrage due to the warehousing of the cargo or any other cause, the master may demand full compensation which shall at least be equal to the amount of demurrage.

the amount of the compensation in case of dispute to be decided by arbitration but in no case to be fixed at a lower figure than for days on demurrage.

**157.** When goods are stored as mentioned in §§ 140 and 156, the master shall be entitled to sell by public auction as much of the goods as will be necessary to cover the claims mentioned in § 155, besides duty and expenses.

**158.** When the master has delivered the cargo to the receiver, he cannot raise any claim on the charterer for those amounts which it is the duty of the receiver to pay, but shall be entitled to recover from the charterer any amount by which he would have been enriched at the expense of the master if every claim became void. If, however, the goods have not been delivered, and the master does not obtain satisfaction of his claims by the sale of the goods, the charterer shall be responsible for the deficiency.

**159.** Any of the parties may withdraw from the contract of affreightment without being liable to pay any compensation, if, before the departure of the ship from the place where the voyage ought to commence, either

a war has broken out which fetters the ship or the cargo, or the ship is put under embargo,

or the port of departure or destination is blockaded, or the exportation from the first named, or the importation to the last named, port is prohibited,

or the voyage of the ship or the conveyance of the goods is prevented by any other act of the public Authorities.

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if the latter be known and present at the place of discharge; otherwise the fact shall be made known in the manner prescribed in Art. 118 for similar cases.

Should for the storing of the goods, or otherwise for the discharging, the master be detained over and above the time allowed for discharging, without any fault or neglect on his part, the owner of the ship shall be entitled to compensation for damage and loss,

the amount of the compensation in case of dispute to be decided by arbitration but in no case to be fixed at a lower figure than for days on demurrage.

**157.** If goods are stored for any of the reasons referred to in Art. 140 or 156, the master shall have the right to sell by public auction as much of the goods as may be sufficient to cover the claims mentioned in Art. 155, besides custom duties and other expenses.

**158.** If cargo is delivered at the disposal of the consignee, the shipowner shall no longer have any right to sue the charterer for any claim which ought to have been paid by the consignee. The shipowner shall be at liberty, however, to recover from the charterer whatever profit the latter would make, to the detriment of the owner, if the claim ceased to exist. Should the cargo not have been delivered by the master and prove insufficient when the sale takes place to cover the claim, the charterer shall be held responsible for the deficiency.

**159.** The master, as well as the charterer, shall have the right to annul the charter, each bearing his own loss and his own expenses, if, previous to the departure of the ship from the port at which the voyage is to commence, the ship or cargo is rendered liable to seizure owing to the outbreak of war, or if an embargo is placed on the ship, or if the port where the voyage commences or that to which the ship is bound is closed in consequence of blockade, or if the exportation from the port of loading or the importation into the port of destination of the cargo referred to in the charter-party is prohibited, or should the vessel's voyage or the forwarding of the goods be hindered by any other act of rulers or princes.

Angaar saadan Hindring kun en Del af en Befragters Gods, har denne ikke Ret til at hæve Kontrakten uden at betale Fragt efter Reglerne i §§ 126 og 129; hæves Kontrakten ikke, kan indladet Gods, som træffes af Hindringen, igen udlosses paa Befragterens Bekostning. Anmelder Befragteren inden Udløbet af Overliggedagene, at han vil indlade andet Gods, er Skipperen pligtig at medtage det, naar det lige saa bekvemt kan føres paa Skibet og det leveres uden Ophold; samtlige dermed forbundne Omkostninger kan han kræve godtgjort af Befragteren, som derhos ogsaa er pligtig til at betale Erstatning efter § 122, hvis Overliggedagene overskrides. Er Skibet befragtet af flere, maa det ikke i saadan Anledning opholdes ud over Overliggedagene uden samtlige Befragteres Samtykke.

Angaar saadan Hindring kun en Del af en Befragters Gods, har denne ikke Ret til at hæve Kontrakten uden at betale Fragt efter Reglerne i §§ 126 og 129; hæves Kontrakten ikke, kan indladet Gods, som træffes af Hindringen, igjen udlosses paa Befragterens Bekostning. Anmelder Befragteren inden Udløbet af Overliggedagene, at han vil indlade andet Gods, er Skibsførerens pligtig til at medtage det, naar det ligesaa bekvemt kan føres paa Skibet, og det leveres uden Ophold; samtlige dermed forbundne Omkostninger kan han kræve godtgjort af Befragteren, som derhos ogsaa er pligtig til at betale Erstatning efter § 122, hvis Overliggedagene overskrides. Er Skibet befragtet af flere, maa det ikke i saadan Anledning opholdes udover Overliggedagene uden samtlige Befragteres Samtykke.

Angår sådant hinder endast en del af befraktares gods, äge han ej häfva aftalet utan att betala frakt, efter ty i 126 och 129 §§ sägs; häfves icke aftalet, må inlastadt gods, som af hindret träffas, på befraktarens bekostnad åter lossas. Anmäler befraktaren före lastningstidens utgång sig vilja i stället inlasta annat gods, som likaså bekvämt kan å fartyget föras, vare befälhafvaren pligtig att medtaga godset, där det utan uppehåll aflämnas; njute dock af befraktarens ersättning, efter pröfning af skiljemän, ej mindre för den ökade kostnad, som för godsets inlastning må uppkomma, än äfven för uppehållet, efter ty i 120 och 122 §§ sägs. Hafva flera befraktat fartyget, hvar till viss del, må fartyget icke för intagande af annat gods utan samtliga befraktares medgifvande uppehållas utöfver lastningstiden.

Er der flere Befragtere, og Kontrakten med en eller flere af dem hæves paa Grund af Hindringer, der ramme Forsendelsen af deres Gods, er Skipperen berettiget til at hæve Kontrakten ogsaa for de øvriges Vedkommende, naar den Fragt, han vilde faa for Rejsen, er mindre end Halvdelen af det hele betingede Fragtbetob.

Er der flere Befragtere, og Kontrakten med en eller flere af dem hæves paa Grund af Hindringer, der rammer Forsendelsen af deres Gods, er Skibsførerens berettiget til at hæve Kontrakten ogsaa for de øvriges Vedkommende, naar den Fragt, han vilde faa for Rejsen, er mindre end Halvdelen af det hele betingede Fragtbetob.

Är fartyget befraktadt till flere, och varda på grund af hinder för en eller flere af befraktarne de med dem slutna aftal häfda, ege befälhafvaren uppsäga jemväl öfriga fraktsluten, der den frakt, som för resan skulle komma att utgå, understiger hälften af hela det betingade fraktbeloppet.

160. Gaar Skibet tabt paa Rejsen, eller erklæres det for ustandsettligt, ophører Fragtkontrakten at være gældende. Skipperen er dog pligtig for Ladningsejerens Regning at træffe hensigtsmæssige Foranstaltninger med Hensyn til Ladningen, saaledes som foreskrevet i § 57.

160. Gaar Skibet tabt paa Rejsen, eller erklæres det for ustandsettligt, ophører Fragtkontrakten at være gjældende. Skibsførerens er dog pligtig til for Ladningsejerens Regning at træffe hensigtsmæssige Foranstaltninger med Hensyn til Ladningen, saaledes som foreskrevet i § 57.

160. Går fartyg under resa förloradt eller förklaras det icke vara iståndsättligt, upphøre befraktningsaftalet att vara gällande; dock vare befälhafvaren pligtig att för lastegarens räkning vidtaga sådan åtgärd med lasten, som i 57 § föreskrifves.

För Godset svares i saa Fald Afstandsfragt efter Længden af den tilbagelagte Del af Rejsen i Forhold til den hele Rejse, dog under Hensyn til den Tid, som Rejsen har medtaget, og til de med samme forbundne særegne Vanskeligheder og Omkostninger i Forhold til den tilbagestaaende Del af Rejsen. Kunne

För Godset svares i saa Fald Afstandsfragt efter Længden af den tilbagelagte Del af Rejsen i Forhold til den hele Reise, dog under Hensyn til den Tid, som Rejsen har medtaget, og til de med samme forbundne særegne Vanskeligheder og Omkostninger i Forhold til den tilbagestaaende Del af Rejsen.

Frakt beräknas i ty fall efter det tillryggagolda afståndets förhållande till hela den resa, fraktslutet afsåg, dock med fäst afseende å den tid, som till resan åtgått, samt de dermed förbundna särskilda svårigheter och kostnader i förhållande till den öfriga resans (afståndsfrakt). Kunna parterna icke

## Danish Text.

Should such hindrance only apply to a portion of the charterer's goods, he has not the right to break off the contract without paying freight according to the regulations in §§ 126 and 129; should the contract not be broken off, the goods which have been loaded and are affected by the hindrance may be discharged again at the expense of the charterer. Should the charterer, before the expiration of the demurrage-days, give notice of his intention to load other goods, the master is bound to receive such goods, if it is just as convenient to the ship to carry them, and they are delivered without delay; he can demand all expenses occasioned thereby to be defrayed by the charterer, who is also bound to give compensation according to § 122, should the demurrage-days be exceeded. If the ship is chartered by several persons, it must not, for such reason as the above mentioned, be detained beyond the demurrage-days, without the joint consent of all the charterers.

If there are several charterers, and the contract with one or more of them is broken off on account of any hindrance, which affects the sending off their goods, the master has the right to break off the contract also with the remaining parties concerned, in case the freight he would obtain for the voyage is less than half of the amount of freight originally agreed to.

**160.** Should the ship be lost during the voyage or be declared not worth repairing, the contract of affreightment ceases to be in force. The master is, however, bound for the account of the owner of the cargo to take adequate measures with reference to the cargo in accordance with the prescriptions of § 57.

In such cases "distance-freight" is to be paid for the goods, according to the length of that portion of the voyage already performed in proportion to the whole voyage; still proper allowance must be made for the time which the voyage has taken, and the particular difficulties and expenses con-

## Norwegian Text.

If only part of the charterer's goods is affected by any such obstacle, he cannot withdraw from the contract except on paying freight according to the rules of §§ 126 and 129. If the contract is not cancelled, such of the goods shipped as have been affected by the obstacle, may be unloaded at the expense of the charterer. If before the expiry of the days of demurrage the charterer announces his intention of loading other merchandise, the master must receive such goods if they can be equally conveniently conveyed in the ship, and are delivered without delay, but he may claim payment of all expenses connected therewith from the charterer, who must also, in the event of the days of demurrage being exceeded, pay such compensation as is referred to in § 122. If the ship is hired by several persons it must in no such case, without the consent of all the charterers, be detained beyond the days of demurrage.

If there are several charterers and the contract is cancelled by one or more of them on account of obstacles which affect the forwarding of their goods, the master shall be entitled to annul the contract with the other parties when the amount of freight he would then be entitled to for the voyage is less than one half part of what the entire freight agreed upon would have amounted to.

**160.** If the ship is lost during the voyage, or condemned as unfit for repair, the contract of affreightment shall become void, but it shall be incumbent on the master to adapt appropriate measures on behalf of the owners, in respect to the goods, in the manner prescribed by the rules of § 57.

In such a case freight shall be payable to the master *pro rata itineris*, calculated according to the proportion of the distance sailed to the whole voyage, but with allowance for the time occupied by the voyage and the difficulties and expenses connected therewith as compared with the

## Swedish Text.

If such hindrance as aforesaid only applies to a portion of the charterer's goods, he shall have no right to annul the agreement without payment of freight, as provided in Arts. 126 and 129. Should the agreement not be annulled, such goods as have been loaded and are affected by the hindrance, may be discharged at the expense of the charterer. Should the charterer, previous to the expiration of the loading time, give notice of his intention to load other goods in their stead, equally suitable for the ship, the master shall be obliged to receive such goods if delivered without delay; the charterer, however, has to compensate the master, according to arbitrators' decision, not only for the increased expense which the loading may cause, but also for the delay as provided in Arts. 120 and 122. If several persons have chartered the ship, each in a certain proportion, the vessel may not be delayed beyond the loading time for the loading of other goods except with the joint consent of all the charterers.

If the ship is chartered by several persons, and any agreement or agreements made are annulled on account of any hindrance suffered by one or several of the charterers, the master shall have the right also to revoke the remaining charterparties, in case the freight, calculated to be earned during the voyage, should not amount to one half of the full amount of freight originally agreed upon.

**160.** In case the ship is lost during the voyage, or declared a constructive total loss, the charterparty shall cease to be in force. It shall be the master's duty, however, for account of the owners of the cargo, to take such measures regarding the cargo as are enjoined in Art. 57.

In such cases the freight is to be calculated for the distance sailed in proportion to the full voyage to which the charter refers; the time required for the voyage and the particular difficulties and expense connected therewith, in comparison with that of the whole voyage, however, to be duly

Parterne ikke enes om den Fragt, som skal betales, kan enhver af dem forlange den bestemt ved lovligt Skøn.

Vil Ejeren overlade Godset for Afstandsfragten, staar det ham frit for.

161. Indtræffer saadan Hindring, som omhandles i § 159, efter at Skibet er afgaaet fra det Sted, hvor Rejsen begynder, er enhver af Parterne ligeledes berettiget til at hæve Kontrakten, men Befragteren skal da betale Afstandsfragt beregnet efter Reglerne i § 160. Hæves Kontrakten, paaligger det Skipperen for Ejers Regning at drage Omsorg for Ladningen overensstemmende med § 57.

Bliver Skibet ved saadan Hindring opholdt paa Indladningsstedet efter der at have indtaget Ladning, eller i Havn, som anlobes under Rejsen, blive Omkostningerne ved Opholdet, indtil Fragtkontrakten er hævet, at fordele paa Skib, Fragt og Ladning efter Reglerne om almindeligt Havari.

162. Hæves Fragtkontrakten af saadan Grund, som i § 159 omhandles, og Gods som Folge deraf skal udlosses, er Befragteren pligtig at bære alle derved foranledigede Omkostninger, saafremt Hindringen for Kontraktens Fuldførelse alene angaar Godset. Angaar den tillige Skibet eller alene dette, eller har Skipperen gjort Brug af sin Opsigelsesret efter § 159, sidste Stykke, gælder derimod den almindelige Regel i § 136.

163. Bliver Skibet af en eller anden Aarsag opholdt paa Indladningsstedet eller senere paa Sted, som anlobes under Rejsen og der er Grund til at antage, at

Kan Parterne ikke enes om den Fragt, som skal betales, kan enhver af dem forlange den bestemt ved lovligt Skjøn.

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161. Indtræffer saadan Hindring, som omhandles i § 159, efterat Skibet er afgaaet fra det Sted, hvor Rejsen begynder, er enhver af Parterne ligeledes berettiget til at hæve Kontrakten, men Befragteren skal da betale Afstandsfragt beregnet efter Reglerne i § 160. Hæves Kontrakten, paaligger det Skibsførerens for Ejers Regning at drage Omsorg for Ladningen overensstemmende med § 57.

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162. Hæves Fragtkontrakten af saadan Grund, som i § 159 omhandles, og Gods som Folge deraf skal udlosses, er Befragteren pligtig til at bære alle derved foranledigede Omkostninger, saafremt Hindringen for Kontraktens Fuldførelse alene angaar Godset. Angaar den tillige Skibet eller alene dette, eller har Skibsføreren gjort Brug af sin Opsigelsesret efter § 159, sidste Stykke, gælder derimod den almindelige Regel i § 136.

163. Bliver Skibet af en eller anden Aarsag opholdt paa Indladningsstedet eller senere paa Sted, som anlobes under Rejsen, og der er Grund til at antage,

enas om den frakt, som bör utgå, skall beloppet bestämmas af skiljemän.

Vill lastegaren för frakten öfverlåta det gods, som finnes i behåll, stånde det honom öppet.

161. Inträffar sådant hinder, som i § 159 § omförmäles, efter det fartyget lemnat den hamn, der resan börjat, stånde ändock hvardera parten fritt att häfva fraktslutet, men befraktaren gälde för den vid aftalets häfvande tillryggagladga delen af resan afståndsfrakt, efter ty i § 160 § sägs. Häfves aftalet, ällige befälhafvaren att för lastegarens räkning vidtaga sådan åtgärd med lasten, som i § 57 § föreskrifves.

Varder fartyget af sådant hinder efter lastens intagande uppehållet i lastningsorten eller i hamn, som under resan anlöpes, skall kostnaden för uppehållet fördelas å fartyg, frakt och last, såsom för gemensamt haveri stadgas; dock att, der aftalet häfves, sådan fördelning ej eger rum i afseende på kostnad, som derefter uppkommer.

162. Häfves fraktslut på grund af sådant hinder, som i § 159 § omförmäles, och skall till följd deraf lossning af last ega rum, vare befraktaren skyldig att vidkännas all kostnad, som för lossningen uppkommer, der hindret angår godset allena; angår hindret tillika fartyget eller detta allena, eller har befälhafvaren gjort bruk af den i nämnda § honom medgifna rätt att uppsäga fraktslut, vare om lossningskostnadens bestridande lag, som i § 136 § stadgas.

163. Varder fartyg af någon anledning uppehållet i lastningsorten eller å ort, som under resan anlöpes, och kan det skäligen antagas, att uppehål-



## Danish Text.

needed therewith in comparison with the remaining portion of the voyage. If the parties cannot agree as to the freight, any of them can demand that it shall be fixed by legal estimate.

The owner of the cargo is at liberty to hand over the goods, in lieu of the distance-freight.

161. Should the ship meet with any hindrance, such as mentioned in § 159, after having left the place where the voyage commenced, each of the parties shall likewise have the right to break off the contract; but the charterer shall then pay distance-freight, calculated according to the regulations in § 160. If the contract is broken off, it is the duty of the master, for the account of the cargo-owner, to take care of the cargo in conformity with § 57.

Should the ship by such hindrance be delayed at the place of loading after the cargo has been loaded, or in any port at which it has called during the voyage, the expenses of the delay, until the contract of affreightment is broken off, are to be divided between the ship, the freight and the cargo, according to the regulations for general average.

162. Should the contract of affreightment be broken off for such reasons as are mentioned in § 159, and goods are to be unloaded in consequence thereof, the charterer is bound to bear all the expenses connected therewith, in case the hindrance affects the goods alone. Should the hindrance also concern the ship or solely the ship, or should the master have made use of his right to denounce the contract, according to the last portion of § 159, the general regulations contained in § 136 are applicable.

163. Should the ship be delayed at the port of loading for some reason or other, or later, at a place which is called at during the voyage, and

## Norwegian Text.

remaining part of the voyage. If the parties disagree as to the freight payable, it shall be lawful for any of them to have the amount fixed by a lawful estimate.

The owner shall have the option of renouncing the goods in lieu of payment of the *pro rata* freight, should he desire to do so.

161. Should any such obstacles as are mentioned in § 159 arise after the departure of the ship from the place where the voyage commenced, any of the parties are entitled to cancel the contract, in which case the charterer shall pay freight *pro rata itineris* calculated according to the rules of § 160. If the contract is annulled it is incumbent on the master to take care of the goods on behalf of the owners thereof, in compliance with the rules of § 57.

If, by any such obstacle as aforesaid, the ship is detained at the place of loading after the shipment of the cargo, or in a port of call during the voyage, the expenses occasioned by such delay and until the cancellation of the contract, shall be apportioned between the ship, freight and cargo according to the rules of general average.

162. If the contract of affreightment be cancelled for any of the reasons referred to in § 159, and the goods be discharged in consequence thereof, the charterer shall defray all expenses occasioned thereby, provided that the obstacles to the fulfilment of the contract only concern the cargo, but should such obstacles also affect the ship, or the ship only, or should the master avail himself of his right to withdraw from the contract under the last section of § 159, the general rules of § 136 shall, on the other hand, be applicable.

163. Should the ship from one cause or another be detained at the place of loading, or subsequently at any place of call during the voyage, the

## Swedish Text.

considered (Distance freight). If the parties cannot agree as to the freight payable, the amount shall be fixed by arbitration.

If the owner of the cargo wishes to surrender the goods remaining, in lieu of freight, he shall be at liberty to do so.

161. Should such hindrance occur as is mentioned in Art. 159, subsequent to the ship having left the port at which the voyage commenced, each party shall nevertheless be at liberty to annul the charterparty, but the charterer shall pay distance freight for the portion of the voyage sailed at the time of the annulling of the charter, as provided in Art. 160. If the agreement is annulled, it shall be the duty of the master, for account of the owner of the cargo, to take such steps respecting the cargo as are enacted in Art. 57.

If the ship is delayed at the port of loading or in any port of call during the voyage, by any such hindrance subsequent to the loading of the cargo, the cost of the delay shall be divided between ship, cargo, and freight in the same manner as prescribed for general average. When the agreement is annulled, such division shall, however, not take place as regards costs subsequently incurred.

162. If an agreement is annulled on account of such hindrance as is referred to in Art. 159 and should, in consequence thereof, discharging of cargo have to take place, any expense in connection with the discharging shall have to be borne by the charterer in case the hindrance affects solely the cargo; should the hindrance affect the ship also, or solely the ship, or should the master have made use of the right to annul the charterparty, conferred upon him according to the same Article, the discharging expenses shall be borne in accordance with the regulations laid down in Art. 136.

163. If the ship for any reason be delayed at the loading port, or in any port of call during the voyage, and the delay is likely to become of

Opholdet vil blive af længere Varighed, staar det Befragteren frit for, midlertidig at lade sit Gods udlosse, naar han stiller Sikkerhed for Betalingen af de i § 155 nævnte Fordringer for det Tilfælde, at Godset ikke bliver betimeligt indladet igen efter Skipperens Tilsigelse. Er der flere Befragtere, kan ingen forlange sit Gods losset uden de øvriges Samtykke, naar disse ved saadan Losning vilde blive skadelidende.

at Opholdet vil blive af længere Varighed, staar det Befragteren frit for midlertidig at lade sit Gods udlosse, naar han stiller Sikkerhed for Betalingen af de i § 155 nævnte Fordringer for det Tilfælde, at Godset ikke bliver betimelig indladet igjen efter Skipsførerens Tilsigelse. Er der flere Befragtere, kan ingen forlange sit Gods losset uden de øvriges Samtykke, naar disse ved saadan Losning vilde blive skadelidende.

let skall blifva af längre varaktighet, ege befraktaren tillsvidare utlossa sitt gods, der han ställer säkerhet för betalning af de fordringar, som i 155 § omförmälas, för den händelse att godset icke på befälhavarens tillsägelse i rätt tid åter inlastas. Är fartyget befraktadt till flere, må lossning af en befraktares gods icke utan öfriges samtycke ega rum, der skada eller förlust skulle dem genom lossningen tillskyndas.

164. Har Skibet paa Grund af Skade maattet søge Nødhavn, og skønnes det, at Ladningen i det hele eller for dens væsentligste Del som Følge af det Ophold, Istandsættelsen udkræver, vil blive bedærvet, er Befragteren berettiget til at hæve Kontrakten og disponere over sit Gods mod at betale Afstandsfragt beregnet efter Reglerne i § 160. Er der flere Befragtere, gælder dette dog ikke, naar nogen af dem forlanger Rejsen fortsat.

164. Har Skibet paa Grund af Skade maattet søge Nødhavn, og skjønnes det, at Ladningen i det Hele eller for dens væsentligste Del som Følge af det Ophold, Istandsættelsen udkræver, vil blive bedærvet, har Befragteren Ret til at hæve Kontrakten og disponere over sit Gods mod at betale Afstandsfragt beregnet efter Reglerne i § 160. Er der flere Befragtere, gjælder dette dog ikke, naar nogen af dem forlanger Reisen fortsat.

164. Har fartyget för liden skada nödgats anlöpa nödhamn och befinnes vid anställd besigtning, i den ordning 41 § bestämmer, att till följd af uppehållet för fartygets istandsättning lasten i sin helhet eller till väsentlig del skulle förderivas, ege befraktaren häfva aftalet mot erläggande af afståndsfrakt, efter ty i 160 § sägs; dock att, der fartyget är befraktadt till flere, den rätt, nyss är sagd, icke eger rum, om någon af öfrige befraktare yrkar resans fortsättande.

165. Er der overdraget særskilte Eksemplarer af et Konnossement til forskellige Personer, giver det Eksemplar bedste Ret, som af Overdrageren først er blevet afsendt eller overleveret, forudsat, at Indehaveren i Medfør af § 134, 2det Stykke, er berettiget til at fordræ Godset udleveret. Dette gjælder dog ikke, hvis Eksemplarerne paa den i § 133, sidste Stykke, angivne Maade, ere betegnede med Nummere, thi da har den Indehaver Fortrinet, hvis Eksemplar er betegnet med det laveste Nummer. Er imidlertid Godset rettelig udlosset til en anden Indehaver, er denne ikke pligtig at udlevere det igen, medmindre det godtgøres, at han ved Konnossementets Erhvervelse ikke har været i god Tro eller har handlet med grov Ugtsomhed.

165. Er der overdraget særskilte Eksemplarer af et Konnossement til forskellige Personer, giver det Eksemplar bedste Ret, som af Overdrageren først er bleven afsendt eller overleveret, forudsat, at Indehaveren i Medfør af § 134, andet Stykke er berettiget til at fordræ Godset udleveret. Dette gjælder dog ikke, hvis Eksemplarerne paa den i § 133, sidste Stykke angivne Maade er betegnede med Nummere; thi da har den Indehaver Fortrinet, hvis Eksemplar er betegnet med det laveste Nummer. Er imidlertid Godset rettelig udlosset til en anden Indehaver, er denne ikke pligtig til at udlevere det igjen, medmindre det godtgøres, at han ved Konnossementets Erhvervelse ikke har været i god Tro eller har handlet med grov Ugtsomhed.

165. Äro exemplar af konnossement efter öfverlåtelse komna i särskilda personers händer och tvista innehafvarne om bättre rätt att utbekomma godset, gifve det exemplar företräde, hvilket öfverlåtaren först lemnat från sig i sådant skick, att mottagaren jemlikt 134 § erhöill behörighet att fordra godsets utlemnande; dock att, der exemplaren betecknats med särskilda nummer, som i 133 § sägs, det exemplar gifver bästa rätt, som är utmärkt med lägsta nummer. Har, innan den, hvilken, efter ty nu är sagd, eger utbekomma gods, dertill anmält sig, lossning i bestämmelsearten skett till annan behörig innehafvare af konnossement, vare denne icke pligtig att från sig lemna hvad han redan utbekommit, der det icke visas, att han vid konnossementets förvärfvande icke varit i god tro eller att han dervid handlat med grof vårdslöshet.

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there is reason to believe that the delay will be of long duration, the charterer is at liberty provisionally to cause his goods to be unloaded, provided he gives security for the payment of the claims mentioned in § 155, in the event of the goods not being reloaded in proper time at the request of the master. If the ship is chartered by several persons, none of these can demand his goods unloaded unless with the consent of the remainder, if these would be injured by such unloading.

164. If the ship, on account of any damage sustained, has been compelled to enter a port of refuge, and it is estimated that the cargo on the whole, or the most essential portion of it will be damaged as a consequence of the delay required for the repairs, the charterer has a right to break off the contract and dispose of his goods, on paying distance-freight according to the regulations of § 160. If there are several charterers, this will, however, not apply, if any of them demands the continuation of the voyage.

165. If several copies of the bill of lading have been handed over to different persons, that copy which has been first sent off or handed over shall have the preference, provided that the bearer, according to the second part of § 134, has a right to demand the delivery of the goods. This will, however, not apply, if the copies are numbered as mentioned in the last part of § 133, because in such case the bearer of the copy with the lowest number shall have the preference. Should the goods, however, have been rightly delivered to another holder of bill of lading, this holder is not bound to deliver the goods up again, unless it can be proved that by the acquisition of the bill of lading he has not been in good faith, or that he has been guilty of gross carelessness.

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charterer shall, if there is reason to expect a protracted delay, be entitled to have his goods temporarily discharged on giving security for the payment of the claims referred to in § 155, in case the goods should not be reloaded in proper time after notice has been given by the master. If there are several charterers none of them can claim to have their goods discharged without the consent of the others when, by such discharge, they would be exposed to any loss.

164. If the ship has sought a port of refuge in consequence of damages sustained, the charterer shall, if it appears that the delay necessitated by the repairs would expose the goods to being entirely or to a great extent damaged, be entitled to withdraw from the contract, and to dispose of the goods on paying freight *pro rata* calculated according to the rules of § 160. If there are several charterers, this rule shall not be applicable when any of the charterers demand that the voyage be continued.

165. If various copies of the bill of lading have been transferred to different persons, the prior right shall attach to that document which has been first forwarded or delivered by the transferor; provided that in virtue of the second section of § 134, the holder can demand the delivery of the goods. This rule shall, however, not be applicable, if the copies have been numbered in the manner described in the last part of § 133, in which case the holder of the copy bearing the lowest number shall take the precedence. If, however, the goods have been rightly unloaded and delivered to the holder of another copy of the bill of lading, such receiver shall not be bound to render up the goods unless it is proved that, in acquiring the bill of lading, he has not acted in good faith, or else has been guilty of gross negligence.

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long duration, the charterer shall have the right, until further, to discharge the goods belonging to him, provided he deposits security for the payment of the claims referred to in Art. 155, in the event of the goods not being reloaded in proper time at the request of the master. If the ship is chartered by several persons, the discharging of the goods of one charterer may not take place except with the consent of the other charterers, should thereby any damage or loss be sustained by them.

164. If the ship has had to call at a port of distress, having sustained damage, and should a survey of the cargo, instituted in the manner prescribed in Art. 41, prove that the whole or a considerable portion of the cargo is liable to deterioration on account of the delay incurred by the repairing of the ship, the charterer shall have the right to annul the agreement in consideration of the payment of distance freight, as provided in Art. 160; should the ship, however, be chartered by several persons, the right aforesaid cannot be made use of, if any one of the other charterers insists on the continuation of the voyage.

165. If copies of the bill of lading, subsequent to any transfer having been made, have got into different persons' hands, and the holders thereof dispute as to the better right for receiving the goods, the copy which the transferor first issued shall, if so drawn up that the consignee, in conformity with Art. 134, became entitled to claim the delivery of the goods, have priority; should, however, the copies have been specially numbered as mentioned in Art. 133, the copy marked with the lowest number shall confer the best right upon the holder. If discharging has been made at the port of destination to any other qualified holder of a bill of lading, previous to the person, entitled as aforesaid to receive the cargo, having given notice of his right so to receive, the former shall not be obliged to deliver back what he has already received, unless it should be proved that he was not acting in good faith, or was guilty of gross carelessness when acquiring the bill of lading.

**166.** Den Ret, en Sælger efter gjældende Lov maatte have til at hindre Udlevering af Godset eller til at kræve det tilbageleveret, naar Køberen bliver ude af Stand til at betale Købesummen eller undlader at foretage, hvad der ifølge Købet paahviler ham, bortfalder ikke derved, at Køberen faar Konnossement.

Er Konnossementet af Køberen overdraget til Tredjemand, har Sælgeren ikke med denne saadan Ret, medmindre Konnossementet indeholder Forbud mod Overdragelse, eller det godtgøres, at Indehaveren af Konnossementet ved dets Erhvervelse ikke har været i god Tro eller har handlet med grov Uagtsomhed. (*Lov af 6 April 1906.*)

**166.** Den Ret, en Sælger efter gjældende Lov maatte have til at hindre Godsets Udlevering eller til at kræve det tilbageleveret, naar Kjøberen bliver ude af Stand til at betale Kjøbesummen eller undlader at foretage, hvad der ifølge Kjøbet paahviler ham, bortfalder ikke derved, at Kjøberen har faaet Konnossement.

Er Konnossementet af Kjøberen overdraget til Tredjemand, har Sælgeren ikke saadan Ret mod denne, medmindre Konnossementet indeholder Forbud mod Overdragelse, eller det godtgøres, at Indehaveren af Konnossementet ved dets Erhvervelse ikke har været i god Tro eller har handlet med grov Uagtsomhed. (*Lov af 24 Mai 1907.*)

Har Kjøberen akeepteret Vexel for Kjøbesummen, betalt

Noget paa denne eller havt nødvendige Udlæg for Godset, er den her omhandlede Ret gjældende, pligtig til at udlevere Kjøberen har afbetalt eller udlagt.

**166.** Hvad i lag finnes stadgadt angående rätt för säljare att, på grund af köparens obestånd eller underlåtenhet att fullgöra hvad honom i följd af köpet åligger, hindra det sålda godsets utgifvande eller i visst fall kräva det åter af köparens borgenärer skall äga tillämpning, ändå att konnossement å godset blifvit till köparen öfverlemnadt. Har på grund af öfverlåtelse från köparen konnossement, som icke innehåller förbehåll mot öfverlåtelse, kommit i annan mans hand, ege säljaren ej gentemot denne den rätt nu är sagd, der det ej visas, att innehafvaren af konnossementet vid dess förvärfvande icke varit i god tro, eller att han därvid handlat med grof vårdslöshet. (*Lag af 20 Juni 1905.*)

Sægleren, naar han vil gjøre Vexelen og tilbagebetale, hvad

**167.** Bortkommet Konnossement kan mortificeres ved Dom paa det Sted, hvor Varerne skulle afleveres. Den, som attraar Mortifikation, har derom til Retten at indgive Andragende, hvori han maa oplyse sin Adkomst til det bortkomne Konnossement og under Eds-tilbud erklære, at han ikke har overdraget det til nogen anden. Indrommes Andragendet, bestemmer Retten Varslet for Stævningen, hvilket ikke maa sættes under 12 Uger og ikke over 1 Aar. Stævningen indrykkes 3 Gange i de til Optagelse af Proklamata bestemte Tiden med mindst 8 Dage mellem hver Gang.

Udlevering af de i Konnossementet omhandlede Varer mod

**167.** Et bortkommet Konnossement kan mortificeres ved Dom paa det Sted, hvor Varerne skal afleveres. Den, som attraar Mortifikationen, har derom til Retten at indgive Andragende, hvori han maa oplyse sin Adkomst til det bortkomne Konnossement og under Eds-tilbud erklære, at han ikke har overdraget det til nogen Anden. Afslaaes Andragendet, er dette ikke til Hinder for, at nyt Andragende senere indgives, støttet til nye Oplysninger. Indrommes Andragendet, bestemmer Retten Varslet for Stævningen, hvilket ikke maa sættes under 12 Uger og ikke over 1 Aar. Stævningen indrykkes 3 Gange i Kundgjørelsestiden med mindst 8 Dage mellem hver Gang.

Udlevering af de i Konnossementet omhandlede Varer mod

**167.** Har konnossement förkommit, ege den, som förlorat konnossementet, hos rätten i fartygets bestämmelseort göra ansökan om konnossementets dödande; inlemne då afskrift af konnossementet eller sådan uppgift om dess innehåll, som må vara nödig för konnossementets säkra igenkännande. Visar sökanden sannolik anledning att konnossementet verkligen förkommit, låte rätten genom offentlig stämning, som å dess dörr skall anslås och i allmänna tidningar tre gånger, fjorton dagar mellan hvarje gång, införas, kalla konnossementets innehafvare att inom viss förelagd tid, räknad från den dag, stämningen sista gången i tidningarne infördes, uppvisa konnossementet vid rätten; skölade den tid, som förelägges, icke sättas kortare än tre månader eller längre än ett år. Varder icke konnossementet inom föreskrifven tid uppvist och fullföljes därefter ansökningen, gifve rätten ut-

*ud § 166.* Jfr. angaaende Forfølgnings- eller Stansningsretten (*stoppage in transitu*) udenfor Solovenes Omraade den danske Konkurslov af 25 Marts 1872, § 4 samt Lov om Kjøb af 6 April 1906 § 41, den norske Konkurslov af 6 Juni 1863, §§ 40 og 41 og Lov om Kjøb af 24 Mai 1907, §§ 40 og 41 samt den svenske af 18 Septbr. 1802, § 38 og svensk Lov om Kjøb og Bytte af Løsere af 20 Juni 1905, § 39.

## Danish Text.

**166.** The right which a seller according to the law now in force may have to prevent the delivery of the goods or to demand that they be returned when the purchaser becomes unable to pay the price, or neglects to perform that which according to the contract of sale is incumbent on him, does not become avoided by the circumstance that the purchaser obtains the bill of lading.

If the bill of lading has been transferred to a third person, the seller has no such right against the latter unless the bill of lading contains a prohibition of transfer, or it is proved that the holder of the bill of lading when acquiring it did not act in good faith or acted with gross carelessness. (*Law of 6th April 1906.*)

## Norwegian Text.

**166.** The right which, according to existing law, the vendor has to stop delivery or to claim returns of the goods, when the purchaser becomes incapable of paying the purchase money, or omits to act in compliance with the terms of the contract, shall not be lost by reason of the purchaser having received a bill of lading.

If the bill of lading has been transferred by the purchaser to a third party, the vendor shall not have such right as aforesaid against the latter, unless such transfer has been expressly forbidden in the bill of lading, or it is proved that, when acquiring the bill of lading, the holder thereof has acted mala fide, or been guilty of gross negligence. (*Law of May 24th 1907.*)

If the purchaser has accepted a bill of exchange for the pur-

chase money, or paid any on account of the goods, the deliver up the bill of exchange, and repay the amount the purchaser has paid off or expended.

## Swedish Text.

**166.** The provisions of the Common Law with regard to the right of a seller to prevent the delivery of goods sold, or in a certain case to reclaim them from the creditors of the purchaser in consequence of the purchaser's insolvency or failure to fulfil his obligations under the purchase, shall be applicable, even though the bill of lading has been handed over to the purchaser. If a bill of lading containing no proviso against transfer has come into the hands of a third party by transfer from the purchaser, the seller has not as against that party the right above mentioned, unless it be proved that the holder of the bill of lading did not act in good faith when acquiring the same, or, in doing so, was guilty of gross carelessness. (*Law of the 20th of June, 1905.*)

**167.** Should a bill of lading be lost, it can be cancelled by judgment in the place where the goods are to be delivered. The applicant must for this purpose give in to the Court a petition, in which he must give information as to his right to the missing bill of lading, and must upon oath declare that he has not transferred it to anyone else. If the petition is granted, the Court shall determine the notice of citation, which must not be less than twelve weeks and not exceed one year. The citation shall be printed three times in the proper newspapers for the publication of legal notices, with at least eight days between each time.

The goods mentioned in the bill of lading can be claimed

**167.** A bill of lading which is lost or missing may be invalidated by a decree of the Court at the place where the goods are to be delivered. The party who desires its invalidation shall make an application to the Court, in which he must state his title to the lost or missing bill of lading, and declare, under an offer to confirm his statement on oath, that he has not assigned it to any other person. Should the application be refused, this shall not prejudice his right to make a fresh application when supported by further evidence. If the application is granted, the Court shall fix the return of the summons, which must not be less than 12 weeks, and not more than one year. The summons shall be published three times in the Gazette for Public Notifications at an interval of at least 8 days between each insertion.

The delivery of goods specified in the bill of lading can,

**167.** If a bill of lading has been lost, the person losing it shall apply to the Court of the port of destination for the cancelling of such bill of lading, and he shall then deliver to the Court a copy of the bill of lading, or such a statement as to the contents thereof as may be necessary for its absolute identification. If the applicant gives any plausible reason showing that the bill of lading is really lost, the Court shall issue a writ to be posted on the door of the Court and to be advertized in the public newspapers thrice, with an interval of a fortnight, summoning the holder of the bill of lading to produce, within a certain appointed time, the said bill before the Court. The time so appointed shall be counted from the date of the last insertion in the newspapers, and shall not be less than three months and not exceed one year. If the bill of lading is not exhibited within the time prescribed and the application

*To § 166.* Cf. concerning the right of following or stopping (*stoppage in transitu*) outside the sphere of the Maritime Law, the *Danish Bankruptcy Act* of 5th March 1872, § 4 and the *Sale Act* of 6th April 1906 § 41, the *Norwegian Bankruptcy Act* of 6th June 1863, §§ 40 and 41 and the *Sale Act* of 24th May 1907, §§ 40 and 41, and the *Swedish Act* of 18th Sep. 1862, § 38 and the *Swedish Law* concerning sale and exchange of movables of 20th June 1905, § 39.

Sikkerhedsstillelse kan forlanges, naar Stævningen er lovlig kundgjort; forinden dette er sket, kræves særlig Kendelse af Retten.

Sikkerhedsstillelse kan forlanges, naar Stævningen er lovlig kundgjort; forinden dette er skeet, kræves særlig Kjendelse af Retten.

slag, hvarigenom konnossementet dödäs.

Sedan offentlig stämning ägätt, ege den, som begärt konnossementets dödande, utbekomma godset, derest han hos rättens ordförandeställersäkerhet för de anspråk å godset, hvilka lagligen må tillkomma innehafvare af konnossementet.

168. Den, som har et Konnossement i Hænde med saadan Adkomst som i § 134 nævnt er ikke pligtig at udlevere det til den, fra hvem det maatte være bortkommet, medmindre det godtgøres, at han ved Erhvervelsen ikke har været i god Tro eller har handlet med grov Uagtsomhed.

168. Den, som har et Konnossement ihænde med saadan Adkomst, som i § 134 nævnt, er ikke pligtig til at udlevere det til den, fra hvem det maatte være bortkommet, medmindre det godtgøres, at han ved Erhvervelsen ikke har været i god Tro eller har handlet med grov Uagtsomhed.

168. Den, hvilken med sådan åtkomst, som i 134 § sägs, har konnossement i handom, vare ej pligtig att utlemna det till den, för hvilken det må hafva förkommit, der det ej visas, att han vid konnossementets förvärfvande icke varit i god tro eller att han dervid handlat med grof vårdslöshet.

169. Angaar en Befragtningskontrakt Befordring af en bestemt Person, og denne for Rejsens Tiltrædelse ved Dod, Sygdom eller andet Forfald bliver forhindret i at medfølge, bliver kun halv Fragt at erlægge, saafremt Forfaldet anmeldes for Skibets Afgang. Hvis ellers nogen, der har betinget sig Plads paa Skib som Passager, ikke kommer til at medfølge, bliver fuld Fragt at betale.

169. Angaar en Befragtningskontrakt Befordring af en bestemt Person, bliver kun halv Fragt at erlægge, saafremt han for Reisens Tiltrædelse ved Dod Sygdom eller andet Forfald bliver bindret i at følge med, og Forfaldet anmeldes for Skibets Afgang. Ellers betales fuld Fragt.

169. Angår befraktningsaftal befordrande af viss person såsom passagerare och dör denne före resans anträdande, eller varder han af laga förfall hindrad att medfölja, skall endast half afgift för resan erläggas, så vida hindret anmäles före fartygets afgang. Uteblifver eljest den, hvilken betingat sig plats såsom passagerare, skall full afgift erläggas.

170. Kontrakt om Passagerbefordring bortfalder, uden at der fra nogen af Siderne kan gores Krav paa Erstatning, naar Skibet gaar tabt eller erklæres nistandsætteligt, eller naar nogen saadan Hindring indtræffer, som omhandles i § 159. Er Rejsen begyndt, er Passageren dog pligtig at betale Fragt for den tilbagelagte Del af Rejsen beregnet efter Reglerne i § 160.

170. Kontrakt om Passagerbefordring bortfalder, uden at der fra nogen af Siderne kan gores Krav paa Erstatning, naar Skibet gaar tabt eller erklæres uistandsætteligt, eller naar nogen saadan Hindring indtræffer, som omhandles i § 159. Er Rejsen begyndt, er Passageren dog pligtig til at betale Fragt for den tilbagelagte Del af Rejsen, beregnet efter Reglerne i § 160.

170. Aftal angående passagerares befordrande vare utan ersättningskyldighet å någondera sidan förfallet, der sådant hinder för resan inträffar, som i 159 eller 160 § sägs; var resan börjad när hindret inträffade, vare passageraren dock pligtig att för den tillryggelagda delen af resan erlägga afgift, efter ty 160 § bestämmer.

171. Passagerer ere pligtige noje at rette sig efter de Forskrifter, som gives for god Skik og Orden om Bord. De ere underkastede Bestemmelserne i § 81.

171. Passagerer er pligtige til noje at rette sig efter de Forskrifter, som gives for god Skik og Orden ombord. De er underkastede Bestemmelserne i § 81.

171. Passagerare vare skyldig att ställa sig till noggrann efterrättelse allt, hvad med afseende å ordning och skick omhord föreskrifves. Hvad i 81 § är stadgadt med afseende å besättningen gälle oek för passagerare.

## Danish Text.

to be delivered on giving security, when the citation is legally published; before that time a special decision from the Court must be obtained.

168. Any person who has obtained possession of a bill of lading with such right as is mentioned in § 134, is not bound to deliver it up to the person who has lost it, unless it is proved that the former did not act in good faith when acquiring the bill of lading, or, in so doing, was guilty of gross carelessness.

169. Should a contract of affreightment refer to the conveyance of a definite person, and the latter, before the commencement of the voyage, by death, illness or any other hindrance should be prevented from accompanying the ship, only half of the passage-money shall be paid, provided notice of such hindrance is given before the departure of the ship. Should anybody who has secured a berth as passenger, otherwise fail to join, full passage shall be paid.

170. Contracts with regard to the conveyance of passengers become null and void, without any of the parties being entitled to demand compensation, if the ship is lost or declared not worth repairing, or if any such hindrance as is mentioned in § 159 occurs. If the voyage was already commenced, the passengers are bound to pay the passage-money for the portion of the voyage performed, calculated according to the regulations in § 160.

171. Passengers are bound strictly to observe whatever may be prescribed for the preservation of order and discipline on board. The regulations in § 81 shall also apply to them.

## Norwegian Text.

when security has been given, be demanded so soon as the summons has been legally effected. Before this has been accomplished, a special decree of the Court will be necessary to allow of the delivery.

168. It shall not be incumbent on the holder of a bill of lading under any such title as is mentioned in § 134, to render it up to the person by whom it has been lost, unless it is proved that, in getting possession thereof, he has not acted in good faith, or has behaved with gross negligence.

169. If a contract is concluded for the conveyance of any certain person (passenger) only half the fare shall be payable if, before the commencement of the voyage, he is prevented from accompanying the ship on account of death, sickness or other impediment, provided notice be given of such circumstance before the departure of the ship. If this is not done the full fare must be paid.

170. A contract for the conveyance of passengers shall become void, without entitling any of the parties to a claim for compensation, when the ship is lost, or declared unfit for repair, or when any such obstacle occurs as is referred to in § 159. If the voyage has commenced the passenger is, however, bound to pay the fare for the distance traversed, computed according to the rules of § 160.

171. The passengers are bound to comply strictly with the regulations prescribed for the maintenance of good order and discipline on board. They shall also be subject to the rules of § 81.

## Swedish Text.

is maintained, the Court shall issue a decree by which the bill of lading is cancelled.

Subsequent to the writ of summons having been issued, the person who applied for the cancelling of the bill of lading shall have the right to obtain possession of the goods, provided he deposits security with the chairman of the Court for such claims in respect of the goods as the holder of the bill of lading may be legally entitled to.

168. Any person who has obtained possession of the bill of lading in the manner referred to in Art. 134, and who still holds the bill, shall not be bound to deliver it up to the person who has lost it, unless it is proved that the former did not act in good faith when acquiring the bill of lading or, in so doing, was guilty of gross carelessness.

169. If the chartering agreement refers to the conveyance of a certain person as passenger, and such person should die previous to the commencement of the voyage, or be prevented from accompanying the ship by any lawful reason, only half the fee shall have to be paid for the voyage, provided notice of such hindrance is given before the departure of the ship. Should the person who has engaged a berth as passenger otherwise fail to join, the full fee shall be paid.

170. Agreements with regard to the conveyance of passengers shall be null and void and entail no liability whatever on either side to pay compensation, in case the voyage does not take place owing to any of the reasons mentioned in Art. 159 or Art. 160. If the voyage was already commenced, when the hindrance occurred, the passenger shall nevertheless have to pay a fee for the distance sailed in accordance with the stipulations contained in Art. 160.

171. Passengers shall be bound strictly to observe whatever may be prescribed with regard to order and discipline on board.

The enactments contained in Art. 81 with regard to the crew shall also apply to passengers.

To § 168. § 76 of the Scandinavian Bills of Exchange provision.

Acts contains a corresponding

172. Med Hensyn til Ansvar for Gods, som Passagerer føre med sig, og som er overleveret til Skipperen eller til den, som er sat til at tage imod Godset, gælde de samme Regler, som ovenfor i dette Kapitel ere givne angaaende Erstatning for tabt eller beskadiget Gods.

173. Skipperen er berettiget til at tilbageholde Passagerernes Gods, indtil Passagerfragten og Betaling for, hvad de have fortæret paa Rejsen om Bord, er erlagt. Han har derhos med Hensyn til dette Gods samme Ret, som i §§ 155—157 er givet Skipperen over andet Gods, hvorfor Fragten ikke betales.

### Sjette Kapitel. Om Bodmeri.

174. Naar Skipperen i Nødstilfælde til Rejsens Fortsættelse eller Ladningens Bevaring eller Viderebefordring optager Pengelaan og derfor pantsætter (forbodmer) Skib, Fragt eller Ladning paa den nedenfor angivne Maade, har Kreditor alene Ret til at holde sig til de forbodmede Værdier efter Rejsens Slutning, men i dem har han Sjøpanteret efter denne Lovs Kapitel II.

175. Bodmeri kan optages paa Skib, Fragt og Ladning, eller paa en eller flere af disse Gjenstande. Optages Laan til Bestridelse af Udgifter, som alene vedkomme Ladningen, kan denne særskilt forbodmes; for andre Udgifter maa Ladningen kun forbodmes i Forbindelse med Skib og Fragt. Ere Skib og Ladning forbodmede under et, anses Fragten indbefattet under Forbodemingen, men ellers kun hvor den særskilt nævnes.

Er nogen af de nævnte Værdier forbodmet for Udgifter,

172. Med Hensyn til Ansvar for Gods, som Passagerer fører med sig, og som er overleveret til Skibsføreren eller den, som er sat til at tage mod Godset, gjælder de samme Regler, som ovenfor i dette Kapitel er givne angaaende Erstatning for tabt eller beskadiget Gods.

173. Skibsføreren er berettiget til at tilbageholde Passagerernes Gods, indtil Passagerfragten og Betaling for, hvad de har fortæret paa Reisen ombord, er erlagt. Han har derhos med Hensyn til dette Gods samme Ret som i §§ 155—157 er givet Skibsføreren over andet Gods, hvorfor Fragten ikke betales.

### Sjette Kapitel. Om Bodmeri.

174. Naar Skibsføreren i Nødstilfælde til Rejsens Fortsættelse eller Ladningens Bevaring eller Viderebefordring optager Pengelaan og derfor pantsætter (forbodmer) Skib, Fragt eller Ladning paa den nedenfor angivne Maade, har Kreditor alene Ret til at holde sig til de forbodmede Værdier efter Rejsens Slutning, men i dem har han Sjøpanteret efter denne Lovs Kapitel II.

Er personligt Ansvar betinget, anses Kravet ikke som Bodmerikrav.

175. Bodmeri kan optages paa Skib, Fragt og Ladning, eller paa en eller flere af disse Gjenstande. Optages Laan til Bestridelse af Udgifter, som alene vedkommer Ladningen, kan denne særskilt forbodmes; for andre Udgifter maa Ladningen kun forbodmes i Forbindelse med Skib og Fragt. Er Skib og Ladning forbodmede under ét, anses Fragten indbefattet under Forbodemingen, men ellers kun, hvor den særskilt nævnes.

Er nogen af de nævnte Værdier forbodmet for Udgifter,

172. Gods, som passagerare förer med sig ombord, skall, när det öfverlemnats till befälhafvaren eller den, som af honom satt är att mottaga godset, i händelse af förlust eller skada ersättas såsom annat gods, efter ty här ofvan är stadgadt.

173. Befälhafvaren vare ej pligtig att utlemna passagerares gods innan passagerareafgiften guldits och betalning erlagts för kost under resan; ege ock, der betalning icke erlägges, upplägga och försälja godset, som i 156 och 157 §§ sägs.

### Sjette kapitlet. Om bodmeri.

174. Upptager befälhafvare i nöd till resans fortsättande eller lastens bevarande eller vidare fortskaffande penningelån och pantförskrifver (förbodmar) därför, på sätt här nedan sägs, fartyg, frakt eller last, ege borgenären för sin fordrans betalning hålla sig allenast till de förbodmade föremålen efter det resan slutat, men njute för sin fordran förmånsrätt, efter ty i II kap. sägs.

Långifvare och låntagare ege rätt att bestämma viss afgift (premie) att för den försträckning och fara erläggas.

175. För bodmerilån må befälhafvaren förpanta fartyg, frakt eller last, hvar för sig eller gemensamt. Tages lån till bestridande af utgift, som angår lasten allena, må denna särskildt förpantas; för annan utgift må lasten icke förpantas utan gemensamt med fartyg och frakt. Äro fartyg och last gemensamt pantförskrifna, skall, utan särskildt förbehåll, jemväl frakten anses vara under pantsättningen innefattad.

Har föremål förbodmats för utgift, som icke angår samma



## Danish Text.

172. With reference to responsibility for goods which passengers bring on board with them, and which have been delivered over to the master or any person empowered by him to receive the goods, the same rules are to be followed as are mentioned before in this chapter concerning compensation for goods damaged or lost.

173. The master has a right to retain the passengers' goods, until the passage and payment for what they have consumed on board during the voyage has been paid. He has, moreover, with reference to these goods the same right as is given to the master under §§ 155—157 respecting other goods for which freight has not been paid.

### Chapter VI. Of bottomry.

174. If, in case of need, the master raises a money loan for the continuation of the voyage, or for the preservation or further conveyance of the cargo, and therefore mortgages the ship, freight or cargo (bottomry) in the manner mentioned below, the creditor has only a right to get the worth of his claim from the values mortgaged after the termination of the voyage, but in them he has a right of seizure according to chapter 11 of the present Law.

175. A bottomry loan can be raised on the ship, freight and cargo, or upon one or several of these objects. Should the loan be raised to meet expenses which solely concern the cargo, the latter can be specially pledged; for any other expense the cargo must only be pledged in connection with ship and freight. If ship and cargo are pledged jointly, the freight shall also be considered included in the pledge, but otherwise only when specially mentioned.

If any of the values mentioned are pledged for disburse-

## Norwegian Text.

172. In respect to the responsibility for the personal goods brought on board by passengers, and delivered to the master or any other person on board authorized to take charge of such goods, the rules contained in this chapter concerning indemnification for goods lost or damaged shall apply.

173. The master shall be entitled to retain the goods of the passengers until the passage money and the cost of their subsistence during the voyage has been paid. As regards such goods the same rules shall apply as are contained in §§ 155—157, concerning the right of the master in respect to goods for which the freight has not been paid.

### Chapter VI. Bottomry.

174. When, in the case of necessity, the master of a ship is compelled to raise a loan for the purpose of enabling the voyage to be continued, or for the preservation or further transmission of the cargo, and therefore hypothecates (under a bottomry bond) the ship, freight or cargo in the manner hereinafter described, the creditor (lender) is only entitled to resort for payment of his debt to the hypothecated property after the termination of the voyage, but possesses in it a maritime lien, according to chapter 11 of this present law.

If personal liability has been stipulated for, the claim shall not be regarded as one of bottomry.

175. A bottomry loan may be raised upon the ship, the freight and the cargo, either separately or collectively. If the loan is raised to defray expenses which exclusively concern the cargo, the cargo may be hypothecated separately, but for other expenses the cargo may only be pledged in conjunction with the ship and the freight. If the ship and the cargo are hypothecated jointly, the freight shall be considered as included in the hypothec, but otherwise only when it is separately mentioned.

If any of the considerations mentioned are hypothecated

## Swedish Text.

172. In case of damage or loss of goods, which have been brought on board by passengers and delivered into the care of the master or any person empowered by him to receive them, compensation for such damage or loss shall be paid as stipulated above for other goods.

173. The master shall not be obliged to deliver up passengers' goods previous to the payment of the passenger-fee and of the boarding during the voyage, and he shall moreover have the right, in case of non-payment, to store and sell the goods in the manner mentioned in Arts. 156 and 157.

### Chapter VI. Bottomry.

174. If, in case of need, the master raises a money loan for the continuation of the voyage or for the preservation of the cargo, or for the further conveyance of the cargo, and for any of the said purposes signs a bottomry bond in the manner hereinafter mentioned, pledging ship, freight, or cargo, the creditor shall, for the payment of his claim, only have to hold himself to the property thus pledged at the termination of the voyage, but shall enjoy priority for the claim as provided in Chapter XI.

The lender and the receiver of the loan shall have the right to fix a certain premium to be paid for such loan and for the risk run.

175. The master may pledge ship, freight, and cargo, jointly or separately, as security for a bottomry loan. Should the loan be taken to pay expenses which solely concern the cargo, the cargo alone should be pledged. For any other expense the cargo should not be pledged, except together with ship and freight. If ship and cargo are pledged jointly, the freight shall also be considered included in the pledge, unless specially excepted.

Should anything be pledged as security for an expense

som ikke vedkomme Pantet, og Fyldestgjorelse deri søgt af Bodmerikreditor, kan Pantets Ejere for det Beløb, som han saaledes har maattet tilsvare, søge Betaling i de Værdier, hvilke Udgifterne vedkom, med samme Ret, som om de vare forbodmede til ham.

**176.** Forinden Skipperen optager Laan paa Bodmeri, skal han nojagtig oplyse de Omstændigheder, som nedsætte ham til at optage Laanet, saa vidt ske kan, ved saadan Forretning, som omhandles i § 41, men ellers ved Erklæringer af Konsul eller, hvor saadan ikke findes, af anden Myndighed.

**177.** Naar Bodmerilaan optages, skal der udfærdiges skriftligt Dokument. Dette maa for at gjælde som Bodmeribrev indeholde:

1. Benævnelsen Bodmeribrev eller anden Betegnelse, som angiver, at Kontrakten er indgaaet som Bodmeri;
2. Laangiverens Navn;
3. Angivelse af Bodmerigjælden (Laanesum og Præmie);
4. Angivelse af de forbodmede Genstande;
5. Skibets Navn;
6. Angivelse af den Reise, for hvilken Laanet optages (Bodmerirejsen);
7. Skipperens Underskrift med Angivelse af Tid og Sted.

**178.** Bodmeribrevet bliver, naar Laangiveren forlanger det, at udfærdige i flere Eksemplarer; Teksten skal i alle være ligelydende og angive, hvor mange Eksemplarer der udstedes.

At Bodmeribrev overdrages til en anden, afskærer ikke den Indsigelse, at de lovlige Betingelser for Bodmerilaans Optagelse ikke have været til Stede.

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**176.** Forinden Skipsføreren optager Laan paa Bodmeri, skal han nojagtig oplyse de Omstændigheder, som nedsætte ham til at optage Laanet, saa vidt ske kan, ved saadan Forretning, som omhandles i § 41, men ellers ved Erklæring af Konsul eller, hvor saadan ikke findes, af anden Myndighed.

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4. Angivelse af de forbodmede Gjenstande;
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At Bodmeribrev overdrages til en anden, afskærer ikke den Indsigelse, at de lovlige Betingelser for Bodmerilaans Optagelse ikke har været tilstede.

föremål, och varder till följd af pantsättningen betalning ur panten utsökt, ege pantens egare söka sitt åter ur de föremål, hvilka utgiften angick, med enahanda rätt, som, der samma föremål för lånet förbodmats, skulle hafva tillkommit långfivaren.

**176.** Innan befälhafvaren upptager lån å bodmeri, skall han låta noggrant bestyrka behöfvets verklighet och omfång, så vida ske kan, genom besigtning i den ordning, 41 § bestämmer, men eljest genom intyg af svensk konsul eller å ort, der sådan tjänsteman icke finnes, af annan myndighet.

**177.** När bodmerilån upptages, skall derom upprättas skriftlig handling (bodmeribrev) med alla de villkor, som betingats. Sådan handling skall, för att gälla såsom bodmeribrev, innehålla:

- 1) Benämning af bodmeribrev eller annan beteckning, som angifver, att aftalet är ingånget såsom bodmeri;
- 2) Långfivarens namn;
- 3) Uppgift å lånets och premien belopp (bodmeriskulden);
- 4) Uppgift å de pantföreskrifna föremålen;
- 5) Fartygets namn;
- 6) Uppgift å den resa, för hvilken lånet upptages (bodmeriresan); och
- 7) Befälhafvarens underskrift tillika med ort och dag för utfärdandet.

**178.** Bodmeribrev skall, der långfivaren det äskar, utfärdas i flera exemplar, hvilka alla skola vara lika lydande och utmärka, huru många blifvit utställda.

Öfverlåtes bodmeribrev, deri långfivaren erhållit lof att låta brevet komma i annans hand, vare mot nye innehafvaren invändning derom att laga anledning till lånets upptagande saknats lika gällande, som mot långfivaren.

## Danish Text.

ments which do not concern the pledge, and satisfaction is sought therein by the lender on bottomry, the owner of the mortgage can for the amount he has thus been obliged to furnish, reimburse himself from the values which the expenses regarded, with the same right as if they had been mortgaged to him.

**176.** Before the master raises any bottomry loan, he shall precisely state the circumstances which oblige him to do so, if possible by a survey in the manner prescribed in § 41; but otherwise on the declaration of the Consul, or, where such official is not to be found, of any other authority.

**177.** When a bottomry loan is raised, a written document shall be issued. This document, in order to be legal as a bill of bottomry, shall contain:

1. The denomination—bill of bottomry—or any other designation, which indicates that the contract is made as a bottomry;
2. The name of the lender;
3. A statement of the bottomry debt (amount of the loan and premium);
4. A statement of the goods pledged;
5. The name of the ship;
6. A statement regarding the voyage for which the loan is raised (bottomry voyage);
7. The master's signature, with statement of time and place.

**178.** The bill of bottomry shall be made out in several copies, when so demanded by the lender; they shall all be of the same tenor and contain a statement as to how many copies have been issued.

Should a bill of bottomry be transferred to another, it does not preclude the exception, that a lawful cause for the raising of a bottomry loan has not been forthcoming.

## Norwegian Text.

for the purpose of covering expenses which do not concern the pledge, and the bottomry creditor (lender) seeks repayment therein, the owner of the pledge may seek repayment of the amount which he thus has to answer for in that property for the benefit of which the expenditure was made, with the same right as if it were hypothecated to him.

**176.** Before raising a loan under a bottomry bond the master shall have the circumstances which compel him to raise the loan accurately explained, if practicable by such proceedings as are mentioned in § 41, but if not by the declaration of a Consul or, where there is no Consul, then by some other Authority.

**177.** When it is intended to raise a loan under a bottomry bond, a deed poll shall be executed which, in order to be valid as a bottomry bond, shall contain:

1. The title "bottomry bond" or some other designation which indicates that the contract has been concluded as a bottomry loan;
2. The name of the lender;
3. A statement of the amount of the debt incurred under the bond (the amount borrowed and the premium to be paid on it);
4. A list of the property hypothecated;
5. The name of the ship;
6. A statement of the voyage for the promotion of which the loan has been raised (the "bottomry voyage");
7. The signature of the master, the name of the place where, and the date on which, the bond has been executed.

**178.** When required by the lender, several copies of the bottomry bond shall be executed, which shall all be identically worded and state the number of copies executed.

The assignment of a bottomry bond to another party shall not exclude the objection that the legal requirements for raising the bottomry loan were wanting.

## Swedish Text.

that does not concern the security pledged, and the said security be sold to pay the claim on the strength of such pledging, the owner of the property pledged shall have the right to recover the same from the property on behalf of which the expense was actually incurred, with the same rights as would have been held by the lender should the latter property have been pledged as security.

**176.** Before the master raises any bottomry loan, he shall cause the reality and the extent of the requirement to be carefully confirmed, if possible by a survey in the manner prescribed in Art. 41, but otherwise by a certificate issued by a Swedish Consul, or, at a place where no such officer resides, by another authority.

**177.** When a bottomry loan is raised, a document shall be drawn up in writing (bottomry bond) containing all the conditions agreed upon. Such document, in order to have the effect of a bottomry bond, shall contain the following viz.:

1. The title of bottomry bond or any other denomination describing the agreement made as a bottomry;
2. The name of the lender;
3. A statement of the amount of the loan and the premium (bottomry debt);
4. A statement of the properties pledged;
5. The name of the ship;
6. A statement regarding the voyage for which the loan is taken (the bottomry voyage);
7. The signature of the master, as well as the date and place of issue.

**178.** In case the lender should so require, the bottomry bond should be made out in several copies, which should all have the same tenor and contain a statement as to the number of copies issued.

If a bottomry bond, containing a clause permitting the lender to allow the bond to be possessed by another person, is thus transferred, and an objection is raised that the loan has been raised without lawful cause, such objection shall hold equally good on the new holder as on the lender.

179. Havaribidrag, som skulle betales af forbodmede Værdier, tilsvares af disse uden Afdrag paa Bodmerigjælden; men blive Værdierne derved utilstrækkelige til at dække denne, bærer Bodmerikreditor Tabet.

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179. För bidrag, som till gäldande af gemensamt haveri skall utgå af förbodmadt föremål, sker ej afdrag å bodmeriskulden; varder af sådan anledning panten otillräcklig till lånets betalande, vare förlusten borgenärens.

180. Det paaligger Skipperen at drage Omsorg for de forbodmede Genstandes Bevaring og Frelse. Uden tvingende Grund maa han ikke foretage nogen Handling, hvorved de udsættes for anden eller større Fare, end Laangiveren ifølge Bodmeribrevet har maattet forudsætte. Forser Skipperen sig herimod, er han ansvarlig for den Skade, som derved foranlediges.

180. Det paaligger Skibsføreren at drage Omsorg for de forbodmede Gjenstandes Bevaring og Frelse. Uden tvingende Grund maa han ikke foretage nogen Handling, hvorved de udsættes for anden eller større Fare, end Laangiveren ifølge Bodmeribrevet har maattet forudsætte. Forser Skibsføreren sig herimod, er han ansvarlig for den Skade, som foranlediges derved.

180. Befälhafvaren åligger att noggrant sörja för de förpantade föremålen vård och bevarande. Utan tvingande skäl må han icke företaga någon handling, hvarigenom pant utsättes för annan eller större fara, än långifvaren på grund af bodmeribrefvets innehåll hade anledning att förutsätta. Bryter befälhafvaren häremot, vare han borgenären ansvarig för all skada och förlust, som deraf kommer.

Har han uden Nødvendighed, og uden at Laangiverens Fordel kræver saadant, forandret den Rejse, der er bestemt i Bodmeribrevet, eller afveget fra den sædvanlige Vej, uden at det er sket for at komme Mennesker i Havsnød til Hjælp, eller har han efter Bodmerirejsens Tilendebringelse udsat de forbodmede Genstande for ny Fare, bliver han, naar disse senere findes utilstrækkelige til Bodmerigjældens Dækning, ansvarlig for det manglende Beløb medmindre det godtgøres, at Tabet vilde være indtraadt, selv om Skipperen havde iagttaget alt, hvad der paalaa ham.

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Har befälhafvaren, utan nödvång och utan att långifvarens fördel sådant bjudit, ändrat den resa, som i bodmeribrefvet finnes bestämd, eller har han, utan sådan anledning och utan att det skett för att bispringa människor i sjönöd, afvikit från vanlig väg, eller har han efter bodmeriresans slut utsatt panten för ny fara; vare befälhafvaren, der panten sedan finnes otillräcklig till lånets gäldande, ansvarig för bristen, så vida icke visas kan, att förlusten skulle hafva uppstått, äfven om befälhafvaren iakttagit hvad honom ålegat.

181. Naar ikke andet er vedtaget, forfalder Bodmerigæld til Betaling paa det Sted, hvor Bodmerirejsen efter Kontrakten ender, Ugedagen efter Skibets Ankomst, uden Løbedage.

181. Naar ikke andet er vedtaget, forfalder Bodmerigjæld til Betaling paa det Sted, hvor Bodmerireisen efter Kontrakten ender, Ugedagen efter Skibets Ankomst, uden Løbedage.

181. Bodmeriskulden skall, der icke annat är aftaladt, betalas å den ort, der bodmeriresan enligt aftalet slutar, å sjunde dagen efter fartygets ankomst.

Sluttes Rejsen, inden Skibet er ankommet til det i Bodmeribrevet angivne Bestemmelsessted, forfalder Laanet til Betaling Ugedagen efter Rejsens Afslutning, og Betalingen bliver at erlægge paa det Sted, hvor Rejsen saaledes sluttes. Det paaligger Skipperen ufortøvet at meddele Fordringshaveren

Sluttes Reisen, inden Skibet er ankommet til det i Bodmeribrevet angivne Bestemmelsessted, forfalder Laanet til Betaling Ugedagen efter Reisens Afslutning, og Betalingen bliver at erlægge paa det Sted, hvor Reisen saaledes sluttes. Det paaligger Skibsføreren ufortøvet at meddele Fordringshave-

Slutar resan innan fartyget hunnit till den i bodmeribrefvet angifna bestämmelseort, vare lånet till betalning förfallet å sjunde dagen efter det resan inställdes, och skall betalningen erläggas å den ort, der resan sålunda slutar; åliggande det befälhafvaren att ofördröjligen underrätta borgenären om re-

## Danish Text.

**179.** Contributions of average which shall be paid of values mortgaged, shall be paid out of these values without any deduction from the bottomry debt; but should the effects thereby become inadequate to cover the bottomry debt, the lender on bottomry bears the loss.

**180.** It is incumbent on the master to see that the pledged goods are taken care of and preserved. Unless for some urgent reason, the master must not act in such way as to expose the said goods to another or greater risk than the lender, according to the bill of bottomry, had reason to suppose they would be subjected to. If, in this respect, the master does wrong, he is responsible for any damage occasioned thereby.

Should the master, without necessity and with no advantage to the lender, have changed the voyage fixed in the bill of bottomry, or deviated from the usual route, unless it is done to assist people in distress, or should he after the termination of the bottomry voyage have exposed the pledged goods to any new danger, he shall, if these goods afterwards are found insufficient for covering the bottomry debt, be held responsible for the amount deficient, unless it is proved that the loss would have been incurred, even if the master had observed all that was incumbent on him.

**181.** Unless otherwise agreed, the payment of the bottomry debt falls due at the place where the bottomry voyage, according to the contract ends the day week after the ship's arrival, without days of grace.

Should the voyage terminate before the ship has reached the port of destination fixed in the bill of bottomry, the loan falls due the day week after the conclusion of the voyage, and payment shall be made at the place where the voyage is so ended. It is incumbent on the master

## Norwegian Text.

**179.** Contributions towards general average which shall be paid on hypothecated property shall be chargeable thereto without allowing of deduction on the debt incurred under the bottomry bond, but, in the event of such property being thereby of insufficient value to cover the debt, the loss shall be borne by the lender of the bottomry loan.

**180.** The master is charged with seeing to the keeping and preservation of the hypothecated property. He may not, without cogent reasons, adopt any measures by which such property would be exposed to other or greater perils than those which the lender might assume were implied in the terms of the bottomry bond. Should the master violate these regulations, he shall be answerable for all loss or damage which may be occasioned by such transgression.

If the master unnecessarily alters the voyage stipulated for in the bottomry bond without it being required in the interests of the lender, or if he has deviated from the ordinary course without any such reason as aforesaid, except in order to assist persons in distress at sea, or if after the completion of the voyage he has exposed the hypothecated property to any new danger, he shall, if the property be subsequently found to be of insufficient value to cover the debt, be responsible for the deficiency, unless it is proved that the loss would have occurred even if the master had observed all the duties incumbent on him.

**181.** When not otherwise agreed upon, the money borrowed under a bottomry bond shall be repayable on the seventh day, without any days of grace, after the arrival of the ship at the place where the voyage ("bottomry voyage") terminates in accordance with the contract.

If the voyage is concluded before the ship arrives at the destination stated in the bottomry bond, the loan shall be repayable on the seventh day after the termination of the voyage, and the repayment shall be made at the place where the voyage is thus concluded. The master is bound

## Swedish Text.

**179.** No deduction from the bottomry debt is made for contribution chargeable on the goods pledged towards general average. Should for any such reason the property pledged prove insufficient to repay the loan, the creditor shall have to bear the loss.

**180.** It shall be the master's duty to see that the property pledged is taken care of and preserved. Unless for some urgent reason the master shall not act in such way as to expose the property to any other or greater danger than the lender had reason to suppose it would be subjected to from the contents of the bottomry bond. In default, the master shall be responsible to the creditor for all damage and loss caused thereby.

If the master, when not compelled by circumstances and with no advantage to the lender, changes the voyage fixed in the bottomry bond or deviates from the proper road without any of the aforesaid reasons and not in order to assist people in distress, or should he expose the property to any new danger, subsequent to the termination of the bottomry voyage, he shall be held responsible for any deficiency, should the property pledged be found insufficient to pay the loan, unless it can be proved that the loss would have been incurred even should the master have strictly observed his duties in this respect.

**181.** Unless otherwise agreed the bottomry debt shall be paid on the seventh day subsequent to the date of the arrival of the ship at the port where the voyage terminates according to the bond.

If the voyage terminates before the ship reaches the port of destination fixed in the bottomry bond, the loan shall be due for payment on the seventh day subsequent to the date of termination of the voyage; and the said payment shall be made at the place where the voyage is

Underretning om Forandringen. Sker denne af anden Grund end i §§ 159 og 160 nævnt, har Fordringshaveren Krav paa Erstatning for de Omkostninger, den medfører for ham.

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sans inställande. Inställes resan af annan anledning, än i 159 eller 160 § sägs, ege borgenären undfå ersättning för all kostnad, som till följd af resans inställande ådrages honom.

182. Naar efter Forfaldstid Bodmerigæld ikke betales ved Paakrav, er Kreditor berettiget til derefter at fordre Renter, 6 pCt. om Aaret, saavel af Kapital som af Præmie.

182. Naar forfalden Bodmerigæld ikke betales ved Paakrav, er Kreditor berettiget til derefter at fordre Renter, 6 pCt. om Aaret, saavel af Kapital som af Præmie.

182. Uteblifver betalning öfver förfallodagen, njute borgenären laga ränta såväl å hufvudstol som å utfäst premie. Skall premien räknas efter tid, löper den ej längre än till förfallodagen.

Er Præmien bestemt efter Tid, beregnes den kun indtil Forfaldsdagen.

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183. Naar Forfaldsdagen er kommen, kan Betaling fordres efter et enkelt Eksempplar af Bodmeribrevet, mod at dette udleveres med paategnet Kvittering. Melder der sig flere Ihændehavere med Fordring paa Betaling, maa den ikke erlægges til nogen af dem, men Skipperen har at deponere det forfaldne Beløb i sikker Forvaring og derom at underrette Parterne.

183. Naar Forfaldsdagen er kommen, kan Betaling fordres efter et enkelt Exemplar af Bodmeribrevet, mod at dette udleveres med paategnet Kvittering. Melder der sig flere Ihændehavere med Fordring paa Betaling, maa den ikke erlægges til nogen af dem, men Skibsføreren har at deponere det forfaldne Beløb i sikker Forvaring og at underrette Parterne derom.

183. Betalning skall erläggas till den, som å förfallodagen visar sig vara behörig innehafvare af ett exemplar af bodmeribrevet, mot dettas återställande med åteeknadt bevis om betalning. Anmäla sig flere behörige innehafvare af bodmeribref, må icke till någon af dem betalning erläggas, utan skall befälhafvaren för vederbörandes räkning öfverlemnna beloppet till den gode man, parterne anvisa, eller, der de icke kunna enas om sådan, nedsätta det i allmänt förvar samt derom underrätta parterna.

For Forfaldstid maa Skipperen ikke erlægge Betaling, medmindre samtlige Eksemplarer af Bodmeribrevet udleveres.

For Forfaldstid maa Skibsføreren ikke erlægge Betaling, medmindre samtlige Exemplarer af Bodmeribrevet udleveres.

Före förfallodagen må icke, der bodmeribrevet gifver lån-gifvaren lof att låta det komma i annans hand, betalning erläggas utan att samtliga exemplaren återställas.

184. Er Bodmeribrevet, naar Forfaldsdag er kommen, ikke til Stede paa det Sted, hvor Bodmerigælden skal betales (jfr. § 181), er Skipperen berettiget til der i sikker Forvaring at deponere Geldens Beløb og derved frigøre det forbodmede. Naar saaledes Penge deponeres, paaligger det Skipperen ufortøvet derom at underrette Fordringshaveren.

184. Er Bodmeribrevet, naar Forfaldsdag er kommen, ikke tilstede paa det Sted, hvor Bodmerigælden skal betales (jfr. § 181), er Skibsføreren berettiget til der at deponere Beløbet i sikker Forvaring og derved frigøre det Forbodmede. Naar saaledes Penge deponeres, paaligger det Skibsføreren ufortøvet at underrette Fordringshaveren derom.

184. Uppvisas icke bodmeribrevet å förfallodagen, ege befälhafvaren sätta bodmeriskuldens belopp i allmänt förvar och derefter förfoga öfver panten. Varda såhunda penningar nedsatta, åligger befälhafvaren att derom ofördröjligen meddela borgenären underrättelse.

185. Saa snart Skibet er ankommet til det Bestemmelsessted, som i Bodmeribrevet er

185. Saasnart Skibet er ankommet til det Bestemmelsessted, som er nævnt i Bodmeri-

185. När fartyget ankommit till den i bodmeribrevet angifna bestämmelseort eller när

## Danish Text.

immediately to inform the creditor of the change. Should this happen for other reasons than mentioned in §§ 159 and 160, the creditor may claim compensation for the expenses which he may incur in consequence of the change.

**182.** If the bottomry debt at the date of maturity is not paid on demand, the creditor has a right, after this date, to demand interest at 6 p. c. per annum for the capital as well as for the premium.

If the premium is to be calculated by time, it is only calculated up to the day of maturity.

**183.** When the date of maturity has arrived, the payment can be demanded by producing a single copy of the bill of bottomry, on condition that this copy is returned with a receipt endorsed on it. Should several holders of claims present themselves for payment, payment must not be made to any of them; but the master shall deposit the amount due for payment in safe keeping, and inform the parties thereof.

Before the time of payment the master must not make any payment, unless each and all of the copies of the bill of bottomry are returned.

**184.** If the bill of bottomry, when the day of payment has come, is not forthcoming at that place where the bottomry debt is to be paid (cfr. § 181), the master has a right to deposit the amount of the debt in safe keeping, and thereby free what was mortgaged. When money is in such manner deposited, it is incumbent on the master immediately to inform the creditor thereof.

**185.** As soon as the ship has arrived at the destination, as set forth in the bill of bot-

## Norwegian Text.

to at once inform the creditor of the change. If the change is caused by other reasons than those mentioned in §§ 159 and 160, the creditor is entitled to claim repayment for the expenses which may thereby be occasioned to him.

**182.** When a debt under a bottomry bond is not paid when demanded, the creditor is thereupon entitled to claim interest, at the rate of 6 per cent. per annum, on both the capital and the premium.

If the premium has been fixed by time, it shall be calculated only to the day on which repayment of the loan falls due.

**183.** When the day for repayment arrives, repayment may be claimed on one individual copy of the bottomry bond provided this be delivered up with a receipt for the money due endorsed thereon. Should several holders of copies of the bottomry bond appear and claim repayment, repayment must not be made to any of them, but the master shall deposit the money due in safe keeping and inform the parties of the action he has taken.

The master shall not repay the loan before the day on which repayment shall fall due unless all the copies of the bottomry bond are delivered into his hands.

**184.** If by the day on which repayment falls due the bottomry bond has not come to hand at the place where the debt incurred under it shall be refunded (see § 181), the master is entitled to deposit there the amount in safe keeping, and thereby release the hypothecated property. When the money is thus deposited the master shall at once inform the creditor of the action he has taken.

**185.** So soon as the ship arrives at the destination named in the bottomry bond,

## Swedish Text.

thus terminated. It shall be the master's duty immediately to inform the creditor of the discontinuation of the voyage. If the voyage is discontinued for any other reason than mentioned in Art. 159 or Art. 160, the creditor shall have a right to compensation for any expense which he may incur in consequence of the discontinuation of the voyage.

**182.** In default of payment on the date of maturity the creditor shall be entitled to legal interest on the capital as well as on the premium. If the premium is to be calculated by time, it shall cease to run on the date of maturity.

**183.** The payment is to be made to the person who, on the date of maturity, proves himself to be the lawful holder of one of the copies of the bottomry bond, which copy shall be returned with a certificate endorsed as regards the effectuation of the payment. If several lawful holders of a bottomry bond present themselves, the payment is not to be made to any of them, but the master shall deliver the amount for account of the party concerned to the trustee nominated by the parties, or, if they cannot agree as to the nomination, the master shall deposit the same with some official person and inform the parties of his having done so.

In case the bottomry bond grants permission to the lender to transfer it to another person, the payment should not be effected before the date of maturity unless all the existing copies are returned.

**184.** In case the bottomry bond is not presented on the day of maturity, the master shall have the right to deposit the amount of the bottomry debt with some official person, and thereupon dispose of the property pledged. Should any money be thus deposited, it shall be the master's duty immediately to inform the creditor.

**185.** On the arrival of the ship at the port of destination mentioned in the bottomry

## Dansk Text.

nævnt, eller saa snart Rejsens Afslutning paa andet Sted er bestemt, kan Fordringshaveren gore Arrest i de forbodmede Genstande, skønt Gælden endnu ikke er forfalden. Arresten behøver ikke at forfølges til Stadfæstelse, men den bortfalder i ethvert Fald 8 Dage efter Forfaldstiden.

Betales forfalden Bodmerigæld ikke efter Paakrav, er Kreditor berettiget til straks, uden Lovmaal og Dom, at lade gore Udlæg i det forbodmede for sit Tilgodehavende og til derefter at lade det sælge ved offentlig Auktion. Naar der er Grund til at befrygte, at forbodmet Ladning vil blive bedærvet ved at henligge i længere Tid, kan Fogdens Kendelse æskes for, at Auktionen skal afholdes snarest muligt; dog bør der ved Bekjendtgørelsen i hvert Fald gives mindst 1 Dags Varsel. Gøres der under Udlægsforretningen Indsigelse mod Bodmeribrevets Ægthed eller Fordringens Gyldighed, eller fremkommer fra anden Mand Paastand om bedre Ret til det forbodmede, kan Retten som Betingelse for Forretningens Fremme forlange, at Kreditor stiller Sikkerhed.

186. Opgives Bodmerirejsen, forinden den er begyndt, er Laanet straks forfaldent til Betaling paa det Sted, hvorfra Rejsen skulde udgaa, og Laantageren svarer i dette Tilfælde i Stedet for Præmie Renter af Kapitalen, 5 pCt. om Aaret, og 3 pCt. i Provision. Er Skibet en Gang afsejlet, bliver den betingede Præmie at erlægge, selv om Rejsen senere opgives.

### Syvende Kapitel. Om Havari.

187. Til almindeligt Havari (Groshavari, Fælleshavari) henregnes enhver Skade, som for-

## Norsk Text.

brevet, eller Reisen paa andet Sted er afsluttet, kan Fordringshaveren gjøre Arrest i de forbodmede Gjenstande, skjønt Gjælden endnu ikke er forfalden. Arresten behøver ikke at forfølges til Stadfæstelse, men den bortfalder i ethvert Fald 8 Dage efter Forfaldstiden.

Betales forfalden Bodmerigæld ikke efter Paakrav, er Kreditor berettiget til strax, uden Forligsmægling, Lovmaal og Dom, at lade gjøre Udlæg i det Forbodmede for sit Tilgodehavende og til derefter at lade det sælge ved offentlig Auktion. Naar der er Grund til at frygte for, at en forbodmet Ladning vil blive bedærvet ved at henligge i længere Tid, kan Administrators Kjendelse æskes for, at Auktionen skal afholdes snarest mulig; dog bør der ved Bekjendtgørelsen i hvert Fald gives mindst 1 Dags Varsel. Gøres der under Udlægsforretningen Indsigelser mod Bodmeribrevets Ægthed eller Fordringens Gyldighed, eller fremkommer der fra anden Mand Paastand om bedre Ret til det Forbodmede, kan Administrator som Betingelse for Forretningens Fremme forlange, at Kreditor stiller Sikkerhed.

186. Opgives Bodmerireisen, forinden den er begyndt, er Laanet strax forfaldent til Betaling paa det Sted, hvorfra Rejsen skulde udgaa, og Laantageren svarer i dette Tilfælde istedetfor Præmie Renter af Kapitalen, 5 pCt. om Aaret og 3 pCt. i Provision. Er Skibet engang afsejlet, bliver den betingede Præmie at erlægge, selv om Reisen senere opgives.

### Syvende Kapitel. Om Havari.

187. Til almindeligt Havari (Groshavari, Fælleshavari) henregnes enhver Skade, som for-

## Svensk text.

det blifvit afgjort, att resan skall sluta å annan ort, ege borgenären, ändå att förfalldag ej är inne, erhålla kvarstad å panten.

Betalas ieke förfallen bodmeriskuld, ege borgenären hos vederbörande öfverexekutor äska, att förbodmadt fartyg eller förbodmad last må säljas i den ordning, som för försäljning af sådan egendom, den der blifvit utmått, är stadgad, äfvensom att förbodmad frakt till honom öfverlemnas.

186. Inställes bodmeriresan innan den börjat, vare lånet genast förfallet till betalning i den hamn, der resan skulle börja; oeh gælde låntagaren i ty fall, i stället för premie, ränta å hufvudstolen efter fem procent om året jemte tre procent provision. Har fartyget redan afgått, skall betingad premie gäldas, äfven om resan senare inställes.

### Sjunde kapitlet. Om haveri.

187. Såsom gemensamt haveri räknas all skada, som till räddning ur en fartyg och last

ad Kap. 7. De heri indeholdte Regler kan fraviges ved dertil sigtende Vedtagelser, f. Ex. Vedtagelse af de saakaldte York and Antwerp rules.



## Danish Text.

tomry, or as soon as the discontinuation of the voyage at another place has been decided upon, the creditor can place the goods mortgaged under arrest, although the debt is not yet due. The arrest need not be prosecuted for ratification; but it is anyhow null and void 8 days after the date of maturity.

Should the bottomry debt, when due, not be paid on demand, the creditor has a right, without legal proceedings, immediately to distrain on what is mortgaged, for his outstanding debt, and thereafter to cause it to be sold by public auction. Should there be any reason to fear that the pledged cargo will be damaged by lying for a considerable length of time, permission can be demanded from the bailiff to hold the auction as soon as possible; there should, however, at the publishing of the auction at all events be given at least one day's warning. If, during the act of execution, exception is taken with regard to the genuineness of the bill of bottomry or the validity of the claim, or if another person claims to have a better right to what is mortgaged, the Court can as a condition for the furtherance of the business demand that the creditor gives security.

**186.** Should the bottomry voyage be given up before it is commenced, the loan immediately falls due for payment at the place where the voyage should have begun, and the borrower in this case pays, instead of premium, interest on the capital at the rate of 5 per cent. per annum and 3 per cent. commission. If the ship has already sailed, the premium agreed upon shall be paid, even if the voyage is given up afterwards.

### Chapter VII. Of average.

**187.** Every damage intentionally done to ship or cargo in order to save them from

## Norwegian Text.

or the voyage is terminated at any other place, the creditor may seize the hypothecated property even though repayment of the debt is not then due. Such seizure need not be ratified by a judicial decree, but in every instance it shall expire seven days after the day on which repayment of the debt fell due.

If when repayment of a loan under a bottomry bond falls due repayment is not made when demanded, the creditor is entitled at once, and that without conciliatory or legal proceedings, to levy execution on the hypothecated property for his outstanding debt, and, thereafter, to have such property sold by public auction. When there is reason to fear that an hypothecated cargo may become damaged by long detention, the permission of the Administrator of the Court to have an auction held at the earliest possible moment can be demanded, but, in all instances, at least one day's notice of such auction should be given by public advertisement. If, during proceedings under a writ of execution, the authenticity of the bottomry bond is questioned, or the validity of the claim, or if another party advances a claim of better title to the hypothecated property, the Administrator of the Court may, as a condition for proceeding, require security from the creditor.

**186.** If the voyage ("bottomry voyage") is given up before it is commenced, repayment of the loan shall fall due at once at the place from which the voyage was to have been made, and, in such a case, the debtor shall, instead of premium, pay interest on the capital amount at the rate of 5 per cent. per annum, and 3 per cent. commission. If the ship has once departed, the premium stipulated for shall be paid, even should the voyage be subsequently abandoned.

### Chapter VII. General Average.

**187.** As general average shall be reckoned all damage voluntarily caused to a ship or cargo,

## Swedish Text.

bond, or, whenever the discontinuation of the voyage at any other port has been decided upon, the creditor shall have the right to obtain a lien on the property previous to the day of maturity.

In default of payment of a bottomry debt, the creditor shall have the right to apply to the Head Bailiff of the place and request that the ship and cargo pledged may be sold, in accordance with the law regarding the sale of property seized for the execution of judgment, and also that the freight pledged should be delivered to him.

**186.** If the bottomry voyage be broken off before it has actually commenced, the loan shall immediately be due for payment at the port where the voyage should have commenced. In such case the borrower, in lieu of premium, shall pay interest on the capital at the rate of five per cent. per annum together with a commission of three per cent. If the ship has already sailed, the premium agreed upon shall have to be paid, even should the voyage later on be discontinued.

### Chapter VII. Average.

**187.** Every damage intentionally done to ship or cargo in order to save ship and cargo

*To Chap. 7.* The provisions of this Chapter may be departed from by agreements concluded for this purpose, for example, by stipulating for the application of the so-called York-Antwerp rules.

## Dansk Text.

## Norsk Text.

## Svensk text.

sættlig tilføjes Skib eller Ladning for at søge Frelse fra en begge truende Fare, saavel som alle andre Opofrelser, der gøres i det nævnte Ojemed, samt Skade og Omkostninger, der have været forbundne med eller været en umiddelbar Følge af saadanne Foranstaltninger. Almindeligt Havari bæres af Skib, Fragt og Ladning i Forhold til deres Værdier, bestemte efter de i §§ 207—212 givne Regler.

188. Som almindeligt Havari godtgøres saaledes navnlig:

sættlig tilføies Skib eller Ladning for at søge Frelse fra en begge truende Fare, saavel som alle andre Opofrelser, der gøres i det nævnte Oiemed, samt Skade og Omkostninger, der har været forbundne med eller været en umiddelbar Følge af saadanne Foranstaltninger. Almindeligt Havari bæres af Skib, Fragt og Ladning i Forhold til deres Værdier, bestemte efter de i §§ 207—212 givne Regler.

188. Som almindeligt Havari godtgjøres saaledes navnlig:

gemensamt hotande fara med afsigt tillfogas fartyg eller last, äfvensom all annan uppföring, som göres för sådant ändamål, så ock skada och kostnad, som vållas eller uppkommer till följd af dylik åtgärd. Gemensamt haveri skall gäldas af fartyg, frakt och last i förhållande till hvaraderas värde, beräknadt på sätt här nedan i 207—211 §§ sägs.

188. Såsom gemensamt haveri ersättes i synnerhet:

1. Gods og Skibstilbehør, som kastes over Bord for at lette Skibet i Havsnød eller for at undgaa Forfølgning af Fjender eller Sørøvere, saa og Gods og Tilbehør, der skyldes over Bord ved Kastningen, ligesom anden Skade, der følger af Kastningen eller af de Foranstaltninger, den nødvendiggjør.

2. Mast, Sejl eller andet Tilbehør, som kappes, Anker og Kætting, som frastikkes, samt Skade, som følger af Kapningen eller Frastikningen, naar Opofrelsen sker for at frelse Skib og Ladning fra fælles Fare, saasom for at hindre Skibbrud eller Sammenstød.

3. Skade, som tilføjes Skib eller Ladning for at afværge Ildsfare eller slukke udbrudt Ild, for at bringe Vandet til Pumperne eller skaffe Styrtsoer Afløb.

4. Omkostninger for i Nød at opnaa Bistand til at bringe Skib og Ladning ud af en fælles Fare, saa og Skade, som tilføjes Skib eller Ladning af Fartøjer, hvis Hjælp benyttes.

5. Skade, som tilføjes Skib eller Ladning derved, at Skibet forsætlig sættes paa Grund for at undgaa større fælles Fare, dog kun for saa vidt deri kan antages at ligge en Opofrelse.

6. Skade, som tilføjes Skib eller Ladning, og Omkost-

1. Gods og Skibstilbehør, som kastes overbord for at lette Skibet i Havsnød eller for at undgaa Forfølgning af Fiender eller Sjørøvere, saavel som Gods og Tilbehør, der skyldes overbord ved Kastningen, og anden Skade, der følger af denne eller de Foranstaltninger, den nødvendiggjør.

2. Mast, Seil eller andet Tilbehør, som kappes, Anker og Kjetting, som frastikkes, samt Skade, som følger af Kapningen eller Frastikningen, naar Opofrelsen sker for at frelse Skib og Ladning fra fælles Fare, saasom for at hindre Skibbrud eller Sammenstød.

3. Skade, som tilføies Skib eller Ladning for at afværge Ildsfare eller slukke udbrudt Ild, for at bringe Vandet til Pumperne eller skaffe Styrtsjøer Afløb.

4. Omkostningerne for i Nød at opnaa Bistand til at bringe Skib og Ladning ud af en fælles Fare, saavel som Skade, som tilføies Skib eller Ladning af Fartøier, hvis Hjælp benyttes.

5. Skade, som tilføies Skib eller Ladning derved, at Skibet forsætlig sættes paa Grund for at undgaa større fælles Fare, dog kun forsaavidt deri kan antages at ligge en Opofrelse.

6. Skade, som tilføies Skib eller Ladning, og Omkost-

1. Gods och fartygs tillbehör, som kastas öfver bord för att lätta fartyget i sjönöd eller för att undkomma fiende eller sjöröfvare, så ock gods och fartygs tillbehör, som vid kastningen bortspolas, samt annan skada, som är en följd af kastningen eller de därför nödiga åtgärder.

2. Master, segel och annat redskap, som kapas, samt ankare och ketting, som fränstickas, för att rädda fartyg och last ur en dem gemensamt hotande fara, såsom för att förekomma skeppsbrott eller sammanstötning, så ock skada, som af dylik åtgärd föranledes.

3. Skada, som tillfogas fartyg eller last för att afvärja eldfara eller släcka utbruten eld eller för att leda vatten i fartyget till pumpane eller för att bereda stört-sjöar aflopp.

4. Kostnad för biträde, som i nöd anlitas för att rädda fartyg och last ur en dem gemensamt hotande fara, så ock skada, som tillfogas fartyg eller last af fartyg, hvars biträde anlitas.

5. Skada, som tillfogas fartyg eller last derigenom att fartyget med afsigt sättes på grund för att undgå större gemensam fara.

6. Skada, som tillfogas fartyg eller last, och kostnad, som

## Danish Text.

danger threatening both, as well as every other sacrifice made for such purpose, and all damages and expenses occasioned by such measures, shall be included in general average. The expenses occasioned by general average shall be met by ship, freight and cargo in proportion to their respective value, calculated in the manner mentioned in §§ 207—222.

188. The following items are especially compensated as general average:

1. Cargo and ship's appurtenances, jettisoned in order to lighten the ship in distress, or to escape from pursuit of enemies or pirates, as well as cargo and ship's appurtenances washed overboard by the sea during the jettison, and any other damage caused by the jettison, or by any of the measures necessitated thereby.
2. Masts, sails and gear cut away, anchors and chains slipped, as well as all damage occasioned thereby, if the sacrifice is made in order to save ship and cargo from any danger threatening both, as, for instance, to escape shipwreck or collision.
3. Any damage done to ship or cargo to prevent fire, or to extinguish a fire already broken out, or in order to allow the water access to the pumps or to free the deck from heavy seas.
4. The cost of assistance employed in distress in order to save ship and cargo from any danger threatening both, as well as all damage done to ship or cargo by any ship requested to assist.
5. Any damage done to ship or cargo on account of the ship being intentionally run aground in order to avoid any greater danger threatening both, but only in so far as it may be considered a sacrifice.
6. Any damage done to ship or cargo, and any expense

## Norwegian Text.

in endeavouring to avoid a danger which may threaten both, as well as all other sacrifices made for such a purpose, and loss or damage and expenses incurred in connection with, or in direct consequence of such acts. General average shall be borne by the ship, freight, and cargo in proportion to their value, as fixed in conformity with the rules of §§ 207 to 212.

188. There will thus be made good under general average:

1. Cargo and ship's apparel thrown overboard for the purpose of lightening a ship in distress, or for escaping from the pursuit of enemies or pirates, as well as goods and ship's apparel washed overboard during such jettison, and other damage consequent on this or from the steps it necessitates.
2. Masts, sails or other ship's apparel which have been cut away, anchors and chain cables slipped and other damage sustained in consequence of such cutting away or slipping, when the sacrifice is made in order to save ship and cargo from a common danger, for instance, for the purpose of avoiding shipwreck or collision.
3. Damage done to ship or cargo in order to avert danger from fire, to extinguish a fire already broken out, to let water have access to the pumps, or provide an outlet for seas shipped on the decks.
4. Expenses incurred, when in distress, in obtaining assistance in order to remove the ship and cargo from danger which threatens both, as well as damage caused to the ship or cargo by ships employed in yielding assistance.
5. Damage caused to the ship or cargo by the ship being voluntarily run aground in order to avoid greater common danger, but only provided that, in so doing, it may be considered that the act involves a sacrifice.
6. Damage caused to ship or cargo, and expenses in-

## Swedish Text.

from any danger threatening both, as well as every other sacrifice made for such purpose and all damage and loss occasioned thereby, shall come under general average.

General average shall be paid by ship, cargo and freight in the proportion of their respective values, calculated in the manner mentioned in Arts. 207—211.

188. In general average compensation is specially given under the following circumstances:

1. Cargo and any ship's appurtenances jettisoned in order to lighten the ship in distress or to escape enemies or pirates, as also cargo or ship's appurtenances carried away by the seas during the jettison, and further any other damage caused by the jettison or by any of the steps necessitated thereby.
2. Masts, sails and gear cut away, and anchors and chains parted from, in order to save ship and cargo from any danger threatening both, for instance in order to escape stranding or collision, and all damage occasioned thereby.
3. Any damage done to ship or cargo to prevent fire or to extinguish a fire already broken out, or in order to allow the water in the ship access to the pumps, or for freeing the decks from seas.
4. The cost of assistance employed in distress for the salvaging of ship and cargo from any danger threatening both, as well as all damage done to ship or cargo by any ship requested to assist.
5. Any damage done to ship or cargo on account of the ship being intentionally beached in order to avoid any greater danger threatening both.
6. Any damage done to ship or cargo and any expense

ninger, som haves for at tage Skibet af Grund og bringe dette samt Ladningen i Sikkerhed. Bliver Rejsen ikke fortsat, fordi Skibet ikke kan tages af Grund, eller fordi det erklæres for ustandsætteligt, henregnes til almindeligt Havari alene den Skade, som er sket, og de Omkostninger, som ere paaløbne, inden det blev aabenbart, at Rejsen ikke vilde kunne fortsættes.

7. Omkostninger, som ere forbundne med at søge Nødhavn for at frelse Skib og Ladning, saasom naar Skibet er blevet usjoddygtigt paa Rejsen, eller dennes Fortsættelse paa Grund af udbrudt Krig eller pludselig Isgang vilde udsætte baade Skib og Ladning for øjensynlig Fare.

De Omkostninger, der i Medfør heraf blive at henregne til almindeligt Havari, ere navnlig: Lods- penge, Fyr-, Mærke- og Havneafgift samt andre Omkostninger ved Skibets Ophold i Nødhavnen; Udgifterne ved Ladningens Losning, Lagring, Genindladning og Stuvning, naar Losningen enten er sket for at bringe Skibet ind i Havnen eller nødvendiggjort af den samme Aarsag, som har tvunget Skibet til at søge Nødhavn, samt Kost og Maanedspenge til Skipper og Mandskab for den Tid, Skibet nødes til at henligge i Nødhavnen af den Grund, som har tvunget til at søge den, dog kun for saa vidt disse Omkostninger ikke have kunnet spares ved Afmonstring. Bliver Opholdet i Nødhavnen foranlediget af anden Grund, saasom naar Rejsens Forsættelse hindres ved Is eller Vejrforhold, eller bliver Istandsættelsen unødigt forhalet, henregnes ikke Kost og Maanedspenge for den saaledes forlængede Tid til almindeligt Havari. Ender Rejsen i Nødhavnen, blive Udgifterne at henregne til almindeligt Havari kun indtil den Tid, da det blev bestemt, at Rejsen skulde ende der.

ninger, som haves for at tage Skibet af Grund og bringe dette samt Ladningen i Sikkerhed. Bliver Rejsen ikke fortsat, fordi Skibet ikke kan tages af Grund, eller fordi det erklæres for ustandsætteligt, henregnes til almindeligt Havari alene den Skade, som er sket, og de Omkostninger, som er paaløbne, inden det blev aabenbart, at Rejsen ikke vilde kunne fortsættes.

7. Omkostninger, som er forbundne med at søge Nødhavn for at frelse Skib og Ladning, saasom naar Skibet er blevet usjoddygtigt paa Rejsen, eller dennes Fortsættelse paa Grund af udbrudt Krig eller pludselig Isgang vilde udsætte baade Skib og Ladning for øiensynlig Fare.

De Omkostninger, der i Medfør heraf bliver at henregne til almindeligt Havari, er navnlig: Lods- penge, Fyr-, Mærke- og Havneafgift samt andre Omkostninger ved Skibets Ophold i Nødhavnen; Udgifterne ved Ladningens Losning, Lagring, Gjenindladning og Stuvning, naar Losningen enten er sket for at bringe Skibet ind i Havnen eller nødvendiggjort af den samme Aarsag, som har tvunget Skibet til at søge Nødhavn, samt Kost- og Maanedspenge til Skibsfører og Mandskab for den Tid, Skibet nødes til at henligge i Nødhavnen af den Grund, som har tvunget til at søge den, dog kun forsaavidt disse Omkostninger ikke har kunnet spares ved Afmonstring. Bliver Opholdet i Nødhavnen foranlediget af anden Grund, saasom naar Rejsens Fortsættelse hindres ved Is eller Veirforhold, eller bliver Istandsættelsen unødigt forhalet, henregnes ikke Kost og Maanedspenge for den saaledes forlængende Tid til almindeligt Havari. Ender Rejsen i Nødhavn, bliver Udgifterne at henregne til almindeligt Havari kun indtil den Tid, da det blev bestemt, at Rejsen skulde ende der.

sker, för att taga fartyget af grund samt föra det och lasten i säkerhet. Varder resan ej fortsatt, emedan fartyget icke kan tagas af grund eller det förklaras icke vara istandsättligt, räknas såsom gemensamt haveri allenast den skada och kostnad, som skett förrän det blef uppenbart, att resan icke kunde komma att fortsättas.

7. Kostnad, som uppkommer till följd deraf att fartyget måste söka nödhavn för räddning af fartyg och last, såsom då fartyget icke längre är i sjövärdigt skick, eller resans fortsättande skulle till följd af utbrutet krig eller tillfälligtvis uppkommen isgång utsätta fartyg och last för uppenbar fara.

Till denna kostnad räknas i synnerhet: lotspenningar, fyr-, båk-, hamn- och andra skeppsumgälder i nödhamnen; kostnad för lastens lossning, uppläggning, återinlastning och stufning, när lossning måste ske för att fartyget skall kunna inkomma i hamnen eller påkallas af samma orsak, som föranlett nödhamnens anlöpande; befälhafvarens och besättningens aflöning och underhåll i nödhamnen under den tid, fartyget der uppehålls af samma orsak, som föranlett nödhamnens anlöpande, så vidt denna kostnad icke kunnat besparas genom afmonstring. Deremot ersättes icke befälhafvarens och besättningens underhåll och aflöning för den tid, uppehållet af annan anledning förlänges, såsom när resans fortsättande hindras af is eller annan af väderleksförhållanden beroende orsak, eller när fartygets istandsättande onödigt fördröjes. Slutar resan i nödhamnen, beräknas såsom gemensamt haveri endast de utgifter, som belöpa å tiden förrän det blef afgjort, att resan der skulle sluta.

## Danish Text.

incurred in order to get the ship afloat and bring it and the cargo in safety. If the voyage is not continued, because the ship cannot be got afloat or is declared a total loss, only such damage and such expenses as were incurred before it was discovered that the voyage could be continued no longer, are considered to be general average.

7. All expenses arising from the necessity of seeking a port of refuge in order to save the ship and its cargo, as for instance if the vessel has become disabled during the voyage, or if the continuation of the voyage might expose both ship and cargo to evident danger owing to the outbreak of a war or sudden drifting of ice.

The expenses which, according to the above, are to be included in general average, are especially the following: Pilotage, light-house charges, beaconage, harbour dues and other expenses connected with the ship's stay in the port of refuge; the cost of the discharging, storing, re-loading and stowage of the cargo, if the discharging either has been effected in order to get the ship into the harbour, or has been found requisite for the same reason that compelled the ship to seek the port of refuge, as well as board and wages to the master and the crew for the time the ship is obliged to lie to in the port of refuge for the reason which compelled the ship to enter the port in question, but only in case the said expenses could not have been saved by discharging the crew. Should the delay in the port of refuge be prolonged for any other reason, for instance if the continuation of the voyage should be hindered by ice or any other cause dependent upon the state of the weather, or if the repair is unnecessarily delayed, board and wages for this prolonged stay do not come under

## Norwegian Text.

incurred in taking the vessel off the ground and placing her and her cargo in safety. If the voyage cannot be continued either on account of it not being possible to get the vessel off, or because the ship is declared unfit for repair, only the damage done, and the expenses incurred up to the time it became obvious that the voyage could not be continued, shall be reckoned as general average.

7. Expenses incurred in seeking a port of refuge for the purpose of saving the ship and cargo, for instance, when the ship has become unseaworthy during the voyage, or when a continuance of the voyage would, owing to the outbreak of war or sudden breaking up of ice, expose the ship and cargo to obvious risk.

The expenses which thus will be classed under general average are: Pilotage, light, beacon and harbour dues, and other costs incurred through the vessel's detention in the port of refuge; the expenses incurred in discharging, storing, re-loading and stowing the cargo, when such discharge was effected either for the purpose of getting the ship into port, or was rendered necessary by the causes which compelled the ship to seek the port of refuge; likewise the wages and maintenance of the master and the crew for the time the ship is compelled to remain in the port of refuge from the circumstances which compelled it to seek such port, but only provided these expenses could not have been saved by discharging the crew. If the detention in the port of refuge is prolonged from other causes, such as when the continuation of the voyage is prevented by ice or the state of the weather, or if the repairs are unnecessarily protracted, the wages and victualing expenses incurred during such prolonged time shall not be reckoned under general average. If the voyage should be terminated in the port of refuge, the

## Swedish Text.

incurred in order to get the ship off the ground and bring her and the cargo into safety. If the voyage is discontinued because the ship cannot be refloated or should she be declared a constructive total loss, only such damage and cost as was incurred before it was discovered that the ship could not proceed, should be counted in general average.

7. Any cost incurred on account of the necessity of seeking a port of refuge for the salvage of ship and cargo, for instance when the vessel is no longer seaworthy, or if the continuation of the voyage would expose ship and cargo to any appreciable danger owing to the outbreak of war or any accidental drifting of ice.

The following are specially included in the said costs, i. e. Pilotage, light-house, beacon, harbour, and other shipping dues at the port of refuge; the cost of discharging, storing, re-loading and stowage of the cargo, when the discharging is necessary in order to get the ship into the port of refuge, or is found requisite for the same reason that necessitated the vessel's calling at the port of refuge; the pay of master and crew and their maintenance at the port of refuge during the ship's stay at such port for the reason necessitating the calling at such port of refuge, unless the said expenses could have been saved by the discharging of the crew. If, however, the delay is prolonged for any other reason, the pay and maintenance of the master and crew during the prolongation of the stay are not recoverable, as for instance: When the vessel is delayed from proceeding by ice or any other cause dependent upon the state of the weather, or when the repairing of the vessel is unnecessarily delayed. Should the voyage be discontinued at the port of refuge, only the expenses

Tab ved Svind, Udlækning og Beskadigelse af Ladningen som Følge af Opholdet i Nodhavn saavel som Omkostninger for at forhindre saadant Tab henregnes ikke til almindeligt Havari. Beskadigelse, der tilføjes Ladningen ved Losning eller Indladning i Nodhavn, horer kun til almindeligt Havari, naar den hidrører derfra, at Losning eller Indladning har maattet ske ved Hjælp af Lægttere eller paa anden usædvanlig Maade.

De særlige Omkostninger i Nodhavn, der foranlediges derved, at Ladning er af farlig Beskaffenhed, henregnes ikke til almindeligt Havari.

Udgifter til midlertidig Istandsættelse i Nodhavn (Nodreparation) af en Skade, der ikke henregnes til almindeligt Havari, erstattes dog som saadant, naar derved er sparet Omkostninger, som ellers havde været nødvendige, og som vilde have henhørt under almindeligt Havari.

8. Tab og Beskadigelse, der tilføjes Ladningen ved i Nød at benytte indladet Gods til Rejsens Fremme eller paa anden Maade til Frelse for Skib og Ladning, ligeledes Tab og Beskadigelse af Skibets Tilbehør ved i Nød at benytte saadant i andet Ojemed, end dets Bestemmelse tilsigter.

Hvad der forbruges af et Dampskibs Kulbeholdning og Maskinformodenheder for at bringe Skibet af Grund og til Pumpning, naar det er sprunget læk, erstattes som almindeligt Havari, ligeledes hvad der forbruges til Skibets Flytning samt til Losning og Genindlad-

Tab ved Svinding, Udlækning og Beskadigelse af Ladningen som Følge af Opholdet i Nodhavn saavel som Omkostninger for at forhindre saadant Tab henregnes ikke til almindeligt Havari. Beskadigelse, der tilføjes Ladningen ved Losning eller Indladning i Nodhavn, horer kun til almindeligt Havari, naar den hidrører derfra, at Losning eller Indladning har maattet ske ved Hjælp af Lægttere eller paa anden usædvanlig Maade.

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Hvad der forbruges af et Dampskibs Kulbeholdning og Maskinformodenheder for at bringe Skibet af Grund og til Pumpning, naar det er sprunget læk, erstattes som almindeligt Havari, ligeledes hvad der forbruges til Skibets Flytning samt til Losning og Gjen-

Minskas lasten gennem af-dunstning eller utlækning, eller skadas den eljest fjøld till af uppehåll i nødhamnen, skall det ej för gemensamt haveri räknas, ej heller kostnad, som göres för att förekomma sådan skada. Skada, som träffar lasten vid lossning eller inlastning i nødhamnen, hänföres icke till gemensamt haveri, så vida icke skadan uppkommit derigenom att lossning eller inlastning måste ske medelst andra farkoster eller på annat icke vanligt sätt.

Särskilda kostnader, hvilka i nødhamnen föranledas deraf att lasten är af farlig beskaffenhet, hänföres icke till gemensamt haveri.

Utgift för tillfälligt afhjelpande i nødhamnen af skada, som icke uppkommit i gemensamt haveri, räknas såsom gemensamt haveri, så vidt derigenom besparas eljest nödvändig utgift, hvilken skolat till sådant haveri hänföras.

8. Skada och förlust, som uppstår derigenom att i nød lasten användes till att bereda utväg för resans fortsättande eller annorledes till räddning af fartyg och last, eller derigenom att fartygs tillbehör begagnas för ändamål, hvartill det ej varit afsedt.

Såsom gemensamt haveri räknas ock hvad af ett ångfartygs kolförråd och andra för maskinens drift afsedda ämnen förbrukas för att taga fartyget af grund eller för pumpning, när fartyget sprunget läck, eller för fartygets förflyttning till och från lossningsplats

## Danish Text.

general average. Should the voyage be discontinued at the port of refuge, only those expenses which are incurred previous to the decision as to the discontinuation of the voyage, are to be reckoned as general average.

No deterioration of the cargo on account of evaporation, leakage or any other damage arising from the delay at the port of refuge, nor any expense incurred in order to avoid such damage, is reckoned as general average. Damage sustained by the cargo on the discharging or loading of it at the port of refuge is considered as general average only in case the damage is caused by the unloading or reloading having had to be effected by means of lighters or in any other unusual manner.

Special expenses in the harbour of refuge, on account of the dangerous nature of the cargo, do not come under general average.

Expenses incurred at the port of refuge for the temporary repairing of any damage, which is not considered as general average, shall be included under general average, provided that any expenses, otherwise necessary and coming under such average, have thereby been saved.

8. Loss and damage incurred owing to the cargo having been used in cases of distress to make it possible for the ship to continue its voyage, or otherwise to save ship and cargo, as well as any loss and damage done to the ship's appurtenances by, for the same purpose, using them otherwise than originally intended.

Whatever is used of the bunker coals of a steamer and of any other stores intended for the working of the engines, in order to get the ship afloat or to pump it when leaking, as well as whatever is used for the shifting of the ship and for discharging and

## Norwegian Text.

expenses will only be reckoned under general average up to the time it was decided to terminate the voyage there.

Losses caused by natural waste, the leaking-out or the deterioration of the cargo consequent on detention in a port of refuge, as well as expenses incurred in attempting to prevent such losses, shall not be included in general average. Any damage which the cargo may sustain through being discharged or reloaded in a port of refuge, is only reckoned under general average when caused through its having to be discharged or reloaded with the aid of lighters or in some other unusual way.

Special expenses which may be occasioned in a port of refuge through the cargo being of a dangerous nature shall not be included in general average.

Expenses incurred in a port of refuge for the temporary repair of damage not reckoned under general average will, however, be made good under general average when by such temporary repairs expenses are saved which, otherwise, would have been necessary and would have been included under general average.

8. Loss and damage caused to the cargo when, in distress, goods shipped are employed to secure the continuation of the voyage, or in any other way to further the safety of the ship and her cargo, also losses of or damages to the ship's apparel when, in distress, it is used for other than its intended purpose.

All that amount which a steamer consumes of her coals and other engine requisites in order to get the ship off the ground, and in pumping when she has sprung a leak, will be made good under general average, also all that may be consumed in shifting the vessel, and

## Swedish Text.

incurred previous to the decision as to the continuation of the voyage may be counted in the general average.

No diminution of the cargo, on account of evaporation or leakage, nor any other damage sustained by the cargo owing to the delay at the port of refuge, shall be counted as general average, nor any expense incurred in order to avoid such damage. Neither shall damage sustained by the cargo in the discharging or reloading at the port of refuge come under general average, unless the damage has been sustained because the discharging and reloading had to be effected by means of other vessels or in any other unusual manner.

Extra expenses caused at the port of distress on account of the dangerous nature of the cargo shall not come under general average.

Any expenses for the temporary repairing at the port of refuge of damage, which has not been sustained in general average, shall come under general average, provided any expense otherwise necessary and coming under such average is thereby saved.

8. Any damage and loss incurred in consequence of the cargo, in cases of distress, being used to render it possible for the ship to proceed on the voyage, or otherwise for the saving of ship and cargo, or when, also in distress, the ship's appurtenances are used for other purposes than those for which they were originally intended.

General average also includes whatever is used of the bunker coals of a steamer or of any other stores intended for the working of the engines in order to float the vessel, to pump the ship when leaking, or for the moving of the ship to and from the

ning i Nødhavn, naar disse Udgifter ere almindeligt Havari, derimod ikke hvad der forbruges ved at søge ind til og ved atter at forlade Nødhavnen eller i øvrigt paa Grund af Rejsens Forlængelse, selv om denne er foraarsaget ved et almindeligt Havari.

9. Skade, som forsætlig tilføjes Skib eller Ladning for at lette Forsvar mod Fjender eller Sørøvere, Skade, som lides under Forsvaret, Krigsmidler, der forbruges ved samme, samt Gods eller Penge, som udgives for at frelse eller frigøre Skib og Ladning.

10. Udgifter til Kur, Pleje og Underhold, medens Sygebehandlingens varer, for Skibsfolk, som ere komne til Skade ved Forsvar mod Fjender eller Sørøvere eller ved Udførelse af Foranstaltninger, der træffes til Frelse for Skib og Ladning, Begravelsesomkostninger for de døde og den forøgede Udgift, som foranlediges derved, at andre Folk maa antages i Stedet for de saarede og de døde.

11. Fragt, der tabes som Følge af et almindeligt Havari.  
12. Omkostninger og Tab, som have været forbundne med at tilvejebringe de fornødne Penge til Dækning af et almindeligt Havari, navnlig Provision, Renter og Assurancepræmie af udlagte Penge, Bodmeripræmie, naar Bodmeris Optagelse har været nødvendig, og Tab, der paa Grund af Prisforskel lides ved Salg af Gods i Nødhavn til Havariets Dækning.

13. Salær til den Kommissionær, som har været antaget til at udføre de Havariets vedrørende Forretninger.

14. Omkostningerne ved Søforklaring, Besigtigelses-,

indladning i Nødhavn, naar disse Udgifter ere almindeligt Havari, derimod ikke, hvad der forbruges ved at søge ind til og ved atter at forlade Nødhavnen eller iøvrigt paa Grund af Rejsens Forlængelse, selv om denne er foraarsaget ved et almindeligt Havari.

9. Skade, som forsætlig tilføies Skib eller Ladning for at lette Forsvar mod Fjender eller Sjørøvere, Skade, som lides under Forsvaret, Krigsmidler, der forbruges ved dette, samt Gods eller Penge, som udgives for at frelse eller frigjøre Skib og Ladning.

10. Udgifter til Kur, Pleje og Underhold, medens Sygebehandlingens varer, for Skibsfolk, som erkomne til Skade ved Forsvar mod Fjender eller Sjørøvere eller ved Udførelse af Foranstaltninger, der træffes til Frelse for Skib og Ladning, Begravelsesomkostninger for de Døde og den forøgede Udgift, som foranlediges derved, at andre Folk maa antages istedetfor de Saarede og de Døde.

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13. Salær til den Kommissionær, som har været antaget til at udføre de Havariets vedrørende Forretninger.

14. Omkostningerne ved Søforklaring, Besigtigelses-,

äfvensom för lastens lossning och inlastning i nödbamn, när kostnaden för sådan åtgärd eljest är att hänföra till gemensamt haveri. Deremot ersättes icke hvad som förbrukas för att löpa in i och åter ut ur nödbamn eller eljest till följd af resans förlängning, äfven om denna vållats af gemensamt haveri.

9. Skada, som för att underlätta försvar mot fiende eller sjöröfvare med afsigt tillfogas eller under försvaret träffar fartyg eller last, krigsförnödenheter, som derunder förbrukas, så oek hvad till räddning eller återlösen af fartyg och last utgifves.

10. Kostnad för läkemedel, skötsel och underhåll åt den, som under försvaret emot fiende eller sjöröfvare eller vid verkställande af åtgärd till räddning af fartyg och last blifvit skadad, kostnad för begravning af den, som ljutit döden, samt den ökade kostnad, redaren får vidkännas för anskaffande af annat manskap i de sårades eller dödes ställe.

11. Frakt, som förloras till följd af gemensamt haveri.  
12. Kostnad och förlust vid anskaffande af medel till bestridande af utgifter, hvilka skola såsom gemensamt haveri ersättas, såsom: provision, ränta och försäkringspræmie å förskjutna medel, bodmeripremie, då penningar måste genom bodmerilån anskaffas, och förlust, uppkommen genom prisskilnad å gods, som till medels anskaffande måste i nödbamn försäljas.

13. Arfvode till ombud, som antagits för besörjande af de haveriet rörande angelägenheter.

14. Kostnad för sjöförklaring, besigtning och värdering



## Danish Text.

reloading at the port of refuge, shall be included under general average, whenever these expenses are items of general average; on the other hand, expenses caused by seeking or leaving the port of refuge or by the prolongation of the voyage, even if the latter is caused by general average accident, should not be included under general average.

## Norwegian Text.

indischarging and reloading the cargo in a port of refuge when these expenses are items of general average, but, on the other hand, not what is consumed in making for and again leaving a port of refuge, or what may otherwise be consumed owing to the prolongation of the voyage, even if this is caused by an accident coming under general average.

## Swedish Text.

discharging place, or for the actual discharging and reloading at a port of refuge, whenever the cost connected therewith would otherwise be chargeable in general average. Stores consumed in the making of, or leaving, a port of refuge, or otherwise used on account of any delay in the voyage, are, on the other hand, not recoverable, even should such delay have been caused by general average.

9. Any damage intentionally done to ship or cargo in order to facilitate a defence against enemies or pirates, or damages which may be sustained during the defence, ammunition used for such purpose, as well as goods sacrificed or expenses incurred in order to rescue or free the ship and cargo.

10. The cost of medicine, nursing, and maintenance whilst being nursed, incurred for any of the crew injured in a defence against enemies or pirates, or in the execution of any measure taken in order to save ship and cargo, burial expenses for the dead, as well as any increase of expenses incurred in procuring fresh hands to take the place of those wounded or killed.

11. Freight lost on account of general average.

12. Expenses and loss in connection with the procuring of the necessary means for the payment of such expenses as are to be recovered as general average, especially commission, interest and insurance premium on money advanced, bottomry premium, if it has been necessary to take money on bottomry bond, and any loss incurred through difference of price when goods are sold at a port of refuge in order to procure money to meet the average.

13. Commission to the agent employed to attend to the matters connected with the average.

14. The costs of the sea-protest, survey and valuation,

9. Damage wilfully caused to ship or cargo in order to facilitate its being defended from enemies and pirates, also damage sustained during such defence, the war material used in the defence of the ship, and also goods and money employed for the purpose of saving or ransoming ship and cargo.

10. Subsistence and medical expenses so long as medical treatment is given to those members of the crew who may have been injured in defending the ship from enemies or pirates, or in carrying out measures taken with a view to save the ship and cargo, burial expenses for the killed, and the increased expenses caused in having to replace the wounded and killed by other seamen.

11. Freight lost in consequence of general average.

12. Losses and expenses incurred through raising funds necessary to cover the costs of general average, especially those of commission, interest and insurance premiums on money advanced, premium on a bottomry loan, if it has been necessary to raise the funds by a bottomry bond, and any losses which, owing to difference in prices, may be suffered from the sale of cargo in a port of refuge to cover general average expenses.

13. Pay to the agent employed in transacting the business connected with the average.

14. Costs incurred in connection with maritime declara-

9. Any damage intentionally done to ship or cargo in order to facilitate a defence against enemies or pirates, or which ship or cargo may suffer during the defence, and the ammunition used for such purpose, as well as any amount or amounts paid for rescuing or redeeming the ship.

10. The cost of medicine, nursing and maintenance of any person injured in a defence against enemies or pirates, or in the execution of any measure taken for the saving of ship and cargo, and the burial expense of any person killed, as well as any increase of expense suffered by the owner in procuring fresh hands to take the place of those who have been killed or wounded.

11. Freight lost on account of general average.

12. Any loss and expense in connection with the procuring of means for the payment of such expenses are to be recovered in general average: i. e. commission, interest and insurance premium on money advanced, bottomry premium when the monies must be obtained by means of a bottomry bond, and any loss incurred through difference of price when goods are sold in order to procure money at a port of refuge.

13. The pay of the agent employed to attend to the matters connected with the average.

14. Any expense in connection with the extending of pro-

Skons- og Taksationsforretninger samt ved Tilvebringelsen af andre Bevisligheder, der udfordres til Beregning og Fordeling af et almindeligt Havari, saa og Omkostningerne herved (Dispaeheringen).

189. Til almindeligt Havari henregnes ikke Skade, der lides ved en ulykkelig Hændelse, som indtræffer under Udførelsen af de Foranstaltninger, der foretages til Frelse af Skib og Ladning, selv om Opførelsen derved undgaas, ej heller Skade, som kun staar i en tilfældig eller middelbar Forbindelse med disse Foranstaltninger.

Saaledes godtgøres ikke under almindeligt Havari Stang, som brækkes ved Vindens Magt, medens man er i Færd med at kappe Masten, selv om Mastens Kapning derved afværges, Skade paa Skib og Ladning ved Storm, Ild, Tyveri eller anden Hændelse under Opholdet i Nodhavn, Tab foraarsaget ved, at Ladningen paa Grund af et almindeligt Havari ikke kan leveres i rette Tid, fordyret Assurance af Skibet eller Tab af forventet Fragt paa Grund af det Ophold, Havariet har medført.

190. Som almindeligt Havari godtgøres ikke:

1. Gods, der er indladet i Skibet uden Skipperens Vidende, samt Penge, Værdipapirer og Pretiosa, som ikke have været behørig angivne overensstemmende med § 143.

2. Dækslast, som kastes, eller Skade paa Dækslast, som er en Folge af Kastning eller anden Foranstaltning, der i Havsnød træffes til Frelse for Skib og Ladning, medmindre Kastningen finder Sted for at lette Skibet, efter at det er kommet paa Grund.

Til Dækslast regnes ikke alene Gods, som er ladet paa Skibets aabne Dæk, i dets Baade eller udenbords, men ogsaa hvad der er ladet i saadan Overbygning, som ikke er bygget ind i Skibets faste Spantesystem eller paa anden Maade yder tilstrække-

Skjens- og Taxationsforretninger eller ved Tilvebringelsen af andre Bevisligheder, der udfordres til Beregning og Fordeling af et almindeligt Havari, samt Omkostninger herved (Dispaeheringen).

189. Til almindeligt Havari henregnes ikke Skade, der lides ved en ulykkelig Hændelse, som indtræffer under Udførelsen af de Foranstaltninger, der foretages til Frelse af Skib og Ladning, selv om Opførelsen derved undgaas, ei heller Skade, som kun staar i en tilfældig eller middelbar Forbindelse med disse Foranstaltninger.

Saaledes godtgøres ikke under almindeligt Havari: Stang, som brækkes ved Vindens Magt, medens man er ifærd med at kappe Masten, selv om Mastens Kapning derved afværges; Skade paa Skib og Ladning ved Storm, Ild, Tyveri eller anden Hændelse under Opholdet i Nodhavn; Tab foraarsaget ved, at Ladningen paa Grund af et almindeligt Havari ikke kan leveres i rette Tid; fordyret Assurance af Skibet eller Tab af forventet Fragt paa Grund af det Ophold, Havariet har medført.

190. Som almindeligt Havari godtgøres ikke:

1. Gods, der er indladet i Skibet uden Skibsforerens Vidende, samt Penge, Værdipapirer og Pretiosa, som ikke har været behørig angivne overensstemmende med § 143.

2. Dækslast, som kastes, eller Skade paa Dækslast, som er en Folge af Kastning eller anden Foranstaltning, der i Havsnød træffes til Frelse for Skib og Ladning, medmindre Kastningen finder Sted for at lette Skibet, efter at det er kommet paa Grund.

Til Dækslast regnes ikke alene Gods, som er lastet paa Skibets aabne Dæk, i dets Baade eller udenbords, men ogsaa, hvad der er lastet i saadan Overbygning, som ikke er bygget ind i Skibets faste Spantesystem eller paa anden Maade yder tilstrække-

samt för anskaffande af annan bevisning, som erfordras för utredande af haveriet, äfvensom kostnad för upprättande af haverifördelningen (dispatche).

189. Till gemensamt haveri räknas icke skada, som af olycks-händelse timar under verkstäl-lande af åtgärd till räddning af fartyg och last, äfven om upp-offring derigenom varder obe-höflig, ej heller skada eller för-lust, som står i endast medel-bart eller tillfälligt samband med sådan åtgärd.

Sälunda ersättes icke i ge-mensamt haveri: stång, som vinden bräckt medan kapning af masten pågick, äfven om kapningen till följd deraf in-ställdes; skada, som åkommit fartyg eller last genom storm, eld, stöld eller annan händelse under uppehåll i nödhavn; för-lust, uppkommen derigenom att lasten till följd af gemensamt haveri icke kunnat aflemnas i rätt tid; den tillökning i försä-kringskostnad eller den förlust af förväntad frakt, hvilken or-sakats genom uppehåll, som haveriet vållat.

190. Såsom gemensamt ha-veri ersättes icke:

1. Gods, som utan befälhaf-varens vetskap inlastats å fartyget; penningar, värde-papper eller dyrbarheter, hvilka icke blifvit, på sätt i 143 § sägs, angifna.

2. Gods, hvilket föres såsom däckslast, när det kastats eller genom annan dylik åtgärd uppoffrats eller ska-dats, så vida icke kastningen skett för att lätta fartyget när det kommit på grund.

Till däckslast räknas icke allenast det gods, som stuf-vats å fartygets öppna däck eller i dess båtar eller som varit hängdt vid sidan utom bords, utan äfven hvad som lastats i sådant täckt rum, som icke är infogadt i far-tygets fasta spantresning el-

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along with the expenses for procuring proofs, required for the calculation and adjustment of a general average, as well as the expenses occasioned thereby.

189. Damage done by accident during the carrying out of any measure for the saving of ship and cargo, even should thereby the sacrifice be avoided, are not considered as general average, nor damage which is only connected with the said measures accidentally or indirectly.

The following damages are consequently not compensated as general average: Topmast broken by the force of the wind during the process of cutting away the mast; even if such cutting away should thereby be suspended; any damage to ship or cargo through storm, fire, theft or any other accident during the stay at the port of refuge; any loss owing to the cargo not being delivered in proper time on account of general average; any increase in the cost of insurance of the ship, or any loss of expected freight owing to the delay caused by the average.

190. The following items are not compensated as general average:

1. Goods loaded without the master's knowledge, as well as money, securities or valuables, which have not been designated in the manner mentioned in § 143.
2. Goods, carried as deck cargo, when thrown overboard or damaged on account of jettison or any other measure taken in distress to save ship and cargo, unless the jettison is effected in order to lighten the ship when aground.

Not only goods stowed on the ship's open deck or in the ship's boats or hung over the side are reckoned as deck cargo, but also goods loaded in any covered place which is not enclosed by the ship's frame, or otherwise affords sufficient security

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tions, surveys and valuations, or in procuring other proofs required for the calculation and distribution of the general average, and the costs in connection therewith (the average statement).

189. General average does not include damage caused by an accident which may have occurred while carrying out measures undertaken in order to save a ship and cargo, even if a sacrifice itself is avoided thereby, or damage which only remotely and indirectly is connected with these measures.

Thus nothing will be allowed under general average, for an upper mast broken by force of wind while the crew is engaged in cutting away the lower mast, even if the cutting away of the mast was thereby avoided; damage or loss to ship and cargo from storm, fire, theft, or other accidents while lying in a port of refuge; or losses sustained owing to the cargo, in consequence of general average, not being delivered within the stipulated time; or extra charges for insurance on the vessel, or compensation for the loss of expected freight caused by the detention under average.

190. General average does not comprise:

1. Goods stowed in a ship without the master's knowledge, money, documents of value, precious stones, or other valuables which have not been properly designated in accordance with § 143.
2. Deck-load jettisoned, or damage caused to a deck-load by the throwing overboard of cargo, or other steps taken when in distress to save a ship and cargo, unless the jettison was effected for the purpose of lightening a stranded vessel.

The term deck-load not only includes goods carried on the upper deck, in the boats, or hanging over the sides of the vessel, but also the goods stowed in such superstructures as are not built into the vessel's framework, or in other ways do

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test, survey and valuation, or for the procuring of evidence required for the adjustment of the average, as well as expenses for the drawing up of the average adjustment.

189. Damage done by accident during the carrying out of some measure for the saving of ship and cargo, even should thereby a sacrifice be rendered unnecessary, as also any damage and loss only indirectly or accidentally connected with such measure, shall not be counted in general average.

The following damages are consequently not compensated in general average: topmast broken by the force of the wind during the process of cutting away the mast, even should such cutting away be thereby suspended; any damage to ship or cargo by storm, fire, theft or any other accident during the stay at the port of refuge; any loss caused by the cargo not being delivered in proper time owing to general average; any increase in the cost of insurance or any loss of expected freight caused by the delay in connection with the average.

190. In general average the following items are not compensated (that is to say):

1. Goods loaded without the master's knowledge, and monies, securities or other valuables, which have not been declared in the manner mentioned in Art. 143;
2. Goods carried as deck cargo, when jettisoned, or in any similar way sacrificed or damaged, unless the jettison has been effected in order to lighten the ship when aground.

Not only goods stowed on the ship's open decks, or in the ship's boats, or hung over the side, are counted as deck cargo, but also goods loaded in any covered spaces which are not wholly or partially enclosed by the ship's extended sides or

lig Sikkerhed imod Solskade og Overbordskylning.

3. Skade, som ved saadane Foranstaltninger tilføjes Skibstilbehør, der var hængende paa Dækket uden der at have sin rette Plads.
4. Skade ved Presning med Sejl (Prangning), selv om denne sker for at undgaa Stranding eller undkomme fra Fjender eller Sørøvere; Skade paa Sejl og paa et Dampskibs Kedler og Maskine, medmindre saadan Skade opstaar ved Forsøg paa at tage Skibet af Grund, samt Skade paa Skibspumperne foranlediget ved Pumpning for at holde Skibet læns.
5. Tab, foranlediget ved Bortkapning af Master, Rundholter eller andet Inventarium, der forinden er brækket ved et særligt Havari, selv om Bortkapningen er nødvendig for at undgaa en Skib og Ladning truende Fare.
6. Skade, som paafores selvantændt eller varm Ladning ved Overbordkastning, Paa-sprøjtning af Vand eller anden Slukningsforanstaltning, saa og i ethvert Tilfælde af Ild om Bord, Skade, som ved saadan Foranstaltning tilføjes Dele af Ladningen, der allerede vare antændte af Ilden.
7. Omkostninger, der ere en Følge af, at Skibet paa Grund af Mangler ved dets Forsyning med Proviant eller Udrustningsgenstande eller som Følge af Ishindring eller anden fra Vejrforhold hidrørende Aarsag har maattet søge Nødhavn.

191. Havarifordeling udelukkes ikke derved, at den Fare, som gør Opoffrelsen nødvendig, kan tilregnes nogen, men den skyldige kan ikke fordrø Erstatning for den Skade, han selv lider ved Havariet. Maa Faren tilregnes Skipperen eller nogen anden, for hvem Rederen i Medfør af § 8 bærer Ansvar, har denne ikke Ret til Erstatning for den Skade, han lider.

kelig Sikkerhed imod Sjøskade og Overbordskylning.

3. Skade, som ved saadane Foranstaltninger tilføjes Skibstilbehør, der var hængende paa Dækket uden der at have sin rette Plads.
4. Skade ved Presning med Seil (Prangning), selv om denne sker for at undgaa Strandning eller undkomme fra Fiender eller Sjørøvere; Skade paa Seil og paa et Dampskibs Kjelder eller Maskine, medmindre saadan Skade opstaar ved Forsøg paa at tage Skibet af Grund, samt Skade paa Skibspumperne foranlediget ved Pumpning for at holde Skibet læns.
5. Tab, foranlediget ved Bortkapning af Master, Rundholter eller andet Inventarium, der forinden er brækket ved et særligt Havari, selv om Bortkapningen er nødvendig for at undgaa en for Skib og Ladning truende Fare.
6. Skade, som paafores selvantændt eller varm Ladning ved Overbordkastning, Paa-sprøjtning af Vand eller anden Slukningsforanstaltning, og, i ethvert Tilfælde af Ild ombord, Skade, som ved saadan Foranstaltning tilføjes Dele af Ladningen, der allerede var antændt af Ilden.
7. Omkostninger, der er en Følge af, at Skibet paa Grund af Mangler ved dets Forsyning med Proviant eller Udrustningsgenstande eller som Følge af Ishindring eller Veirforhold har maattet søge Nødhavn.

191. Havarifordeling udelukkes ikke derved, at den Fare, som gjør Opoffrelsen nødvendig, kan tilregnes Nogen, men den Skyldige kan ikke fordrø Erstatning for den Skade, han selv lider ved Havariet. Maa Faren tilregnes Skibsføreren eller nogen Anden, for hvem Rederen i Medfør af § 8 bærer Ansvar, har denne ikke Ret til Erstatning for den Skade, han lider.

ler eljest lemnar tillräcklig säkerhet mot sjöskada och bortspolning.

3. Fartygs tillbehör, som ka-stats eller genom annan dy-lig åtgärd uppförats eller skadats, när det vid tillfället var liggande å däckets utan att der hafva sin rätta plats.
4. Skada, uppkommon genom pressning med segel, äfven om denna företagits för att undgå strandning eller undkomma fiende eller sjöröf-vare; skada, som af annan orsak uppkommit å segel, eller skada å ångfartygs pan-nor eller maskin, der ej ska-dan uppkommit vid försök att taga fartyget af grund; skada å fartygs pumpar, upp-kommen vid pumpning för att hålla fartyget läns.
5. Mast, rundhult eller annat fartygets tillbehör, som ka-pats, när det förut blifvit bräckt, äfven om åtgärden var nödvändig till förekom-mande af fara för fartyg och last.
6. Skada, som genom besprut-nings med vatten eller annan släckningsåtgärd tillfogats last, som af sig sjelf fattat eld eller tagit värme; skada, som vid släckning af eld, hvilken annorledes uppstått, tillfogats den del af lasten, hvilken redan var af elden angripen.
7. Kostnad, uppkommen deri-genom att fartyget på grund af otillräcklig proviantering eller eljest bristfällig utrust-nings eller till följd af ishin-dring eller annan af väderleks-förhållanden beroende orsak måst inlöpa i nödhamn.

191. Fördelning af skada, uppkommen i gemensamt ha-veri, må ega rum, oaktadt den fara, som föranlett haveriet, uppstått genom någons våll-lande; dock ege denne ej åt-njuta någon ersättning i ha-veriet. Var faran vållad genom fel eller försummelse, hvarför redaren jemlikt § 8 § bör an-svara, njute denne ej ersätt-nings i haveriet.

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against damage, or the risk of being washed away by the seas.

3. Damage done by such measures to the ship's appurtenances lying on the deck and being out of their proper place.
4. Damage caused by carrying press of sail, even if this was done to avoid running ashore, or to escape an enemy or pirates; damage to sails or to engines and boilers of a steam-ship, unless such damage is sustained in endeavouring to float the ship; as well as any damage to a ship's pumps occasioned by pumping in order to keep the water out.
5. Loss occasioned by the cutting away of masts, spars or other ships gear, when previously broken by any particular average, even should the cutting away have been necessary to avoid a danger to ship and cargo.
6. Damage to cargo by jettison, squirting on of water, or any other measure adopted to extinguish a fire in case of the cargo having become heated or ignited spontaneously, as well as, in any case of fire on board, damage done by measures as the above to that portion of the cargo which already had caught fire.
7. Expense occasioned by the ship having been obliged to call at a port of refuge on account of insufficient provisioning, or any other want of proper equipment, or owing to hindrance by ice, or for any other reason dependent upon the state of the weather.

191. The distribution of the damage caused by average is not excluded by the fact that the danger which makes the sacrifice necessary may be attributed to some person; the guilty person, however, has no right to demand compensation for the damage which he himself sustains by the average. If the danger is to be attributed to the master or any other person for whom the owner is answerable in accordance with

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not afford sufficient security from damage by the sea, or from being washed overboard.

3. Damage which by such measures may be caused to ship's apparel lying on deck when not in its proper place.
4. Damage caused by carrying a press of sail, even if this was done in order to avoid stranding or to escape from enemies or pirates; damage to sails, and to the boilers or engines of steamers, unless such damage has been caused in attempting to get the vessel off the ground, and also damage caused to the pumps in attempting to keep the ship free of water.
5. Losses caused by the cutting away of masts, spars or other gear already broken in particular average, even if the cutting away is rendered necessary in order to avoid a danger which threatens ship and cargo.
6. Damage caused to spontaneously ignited or heated cargo by throwing it overboard, by pumping water over it, or by any other measures taken to extinguish the fire, and also, in every case of fire on board, the damage caused by such measures to any part of the cargo already ignited.
7. Expenses incurred in consequence of the ship having had to seek a port of refuge through deficiency in her outfit or stores, or through detention by ice or other hindrances caused by the weather.

191. The average distribution shall not be precluded from the fact that the danger which necessitated the sacrifice was attributable to some individual, but the person who created the danger shall not have any claim to compensation for the loss or damage he himself may suffer through the average. If the danger to which the vessel was exposed, was attributable either to the master or to anyone else for

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otherwise afford sufficient security against damage or the danger of being carried away by the seas.

3. Any ship's appurtenances thrown overboard or in any similar manner sacrificed or damaged, whilst lying on deck at the time and not having its proper place there.
4. Any damage caused by pressure of sails, even if such pressure is caused in order to avoid stranding or to escape an enemy or pirates; damage to sails otherwise caused or any damage to the engines or boilers of a steamer, unless such damage is sustained when endeavouring to re-float the ship; any damage to a ship's pumps during the pumping in order to keep the water out.
5. Any mast, spar or other ship's gear cut away, when previously broken, even should such measure have been necessary to avoid danger to ship and cargo.
6. Any damage to cargo by water or by any other measure adopted to extinguish a fire, in case of its heating or catching fire of itself, and any damage which, in the quenching of a fire otherwise commenced, is suffered by that portion of the cargo which already had caught fire.
7. Any expense caused by the ship being obliged to call at a port of distress on account of insufficient provisioning, or any other want of proper equipment, or on account of hindrance by ice, or for any other reason dependent upon the state of the weather.

191. The apportionment of damage resulting from general average may take place in spite of the danger, occasioning the average, being brought on by the act of some person. No compensation in the general average shall, however, benefit such person in default. If the danger is caused by any fault or neglect for which the owner of the ship is answerable, in accordance with Art. 8, he shall not be entitled

Har Skipperen eller nogen, som ifølge sin Stilling om Bord har handlet paa Skipperens Vegne, feilet ved Bedømmelsen af Farens Beskaffenhed eller ved Valget af Midler til at afværge Faren, udelukkes ikke derved Havarifordeling, men Rederen kan ikke fordre den Skade, han har lidt, erstattet, medmindre den begaaede Fejl efter de forhaandenværende Omstændigheder maa anses som undskyldelig.

Den, som saaledes taber Ret til Erstatning eller har maattet udrede Havaribidrag paa Grund af en andens Fejl, kan kræve Erstatning hos den, hvem Ansaret paahviler.

**192.** Havarifordeling udelukkes ikke derved, at det med Opofrelsen tilsigtede Ojemed ikke opnaas ved denne.

**193.** Havarifordeling udelukkes ikke derved, at Opofrelsen har omfattet enten hele Skibet eller hele Ladningen, ej heller derved, at der efter Havariet kun bjerges af Skibet alene eller af Ladningen alene.

**194.** Naar en Opofrelse maa gøres, er det Skipperens Pligt at paase, at Tabet ikke bliver større, end Ojemedet udkræver. Saaledes bør i Tilfælde af Kastning af Ladning og Skibstilbehør de tungeste og mindst kostbare Genstande saa vidt muligt først kastes fremfor de lettere og mere kostbare.

Har Skipperen ved urigtigt Forhold foraarsaget større Skade end nødvendigt, kommer for saa vidt § 191 til Anvendelse.

**195.** Hvis Omstændighederne tillade det, bør Skipperen, forinden han foretager nogen

Har Skibsforeren eller Nogen, som ifølge sin Stilling ombord har handlet paa Skibsforerens Vegne, feilet ved Bedømmelsen af Farens Beskaffenhed eller ved Valget af Midler til at afværge Faren, udelukkes ikke derved Havarifordeling, men Rederen kan ikke fordre den Skade, han har lidt, erstattet, medmindre den begaaede Fejl efter de forhaandenværende Omstændigheder maa ansees som undskyldelig.

Den, som saaledes taber Ret til Erstatning eller har maattet udrede Havaribidrag paa Grund af en Andens Feil, kan kræve Erstatning hos den, hvem Ansaret paahviler.

**192.** Havarifordeling udelukkes ikke derved, at det med Opofrelsen tilsigtede Ojemed ikke opnaaes ved denne.

**193.** Havarifordeling udelukkes ikke derved, at Opofrelsen har omfattet enten hele Skibet eller hele Ladningen, ei heller derved, at efter Havariet alene Skibet eller alene Ladningen, helt eller delvis, berges.

**194.** Naar en Opofrelse maa gøres, er det Skibsforerens Pligt at paase, at Tabet ikke bliver større, end Ojemedet udkræver. Saaledes bør ved Kastning af Ladning og Skibstilbehør de tungeste og mindst kostbare Gjenstande saavidt muligt kastes først fremfor de lettere og mere kostbare.

Har Skibsforeren ved urigtigt Forhold foraarsaget større Skade end nødvendigt, kommer forsaavidt § 191 til Anvendelse.

**195.** Hvis Omstændighederne tillader det, bør Skibsforeren, forinden han foretager nogen

Har befälhafvaren eller den, som egt handla å hans vägnar, felat vid bedömande af farans beskaffenhet eller vid valet af medel till dess afvärjande, må skadan ändock fördelas såsom gemensamt haveri; dock vare redaren, der ieke åtgärden på grund af de omständigheter, under hvilka den vidtagits, må anses ursäktlig, förlustig rätt till ersättning.

Den, som sålunda går förlustig rätt till ersättning eller nödgas utgifva bidrag till haveriet, ege söka sitt åter af den, som lagligen bör ansvara för skadan.

**192.** Fördelning af skada i gemensamt haveri må ega rum, oaktadt det ändamål, som med uppoffringen afsågs, ieke genom densamma uppnåts.

**193.** Fördelning af skada i gemensamt haveri må ega rum, ändå att fartyget eller lasten för ändamålet fullständigt uppoffrats eller att efter haveriet endast fartyg eller endast last, helt eller delvis, bergats.

**194.** Skall uppoffring ske, åligge befälhafvaren tillse, att förlusten ieke blifver större, än för ändamålet är nödvändigt. Vid kastning af gods eller fartygs tillbehör skall, så vidt faran det medgifver, iakttagas, att det, som är af svårare tyngd eller mindre värde, först kastas, men det lättare och det dyrbarare godset så länge som möjligt behålles.

Har befälhafvaren genom felaktigt förfarande orsakat större skada eller förlust, än nödigt var, vare lag, som i 191 § sägs.

**195.** Förrän befälhafvaren vidtager åtgärd, hvaraf gemensamt haveri kan följa, kalle

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§ 8, the latter is not entitled to compensation for the damage sustained.

In case of error of judgment on the part of the master or any person acting on his behalf in virtue of his position on board, as regards the nature of the danger, or the measures taken to avoid it, the expenses caused by the damage should, nevertheless, be made good as in general average; the owner of the ship, however, has forfeited his right to compensation for the damage sustained by him, unless the error committed, according to circumstances, may be considered excusable.

Anybody who has thus forfeited his right to compensation, or been compelled to contribute to the average on account of faults committed by another, may demand compensation of the person legally responsible for the damage.

192. The distribution of the expenses caused by damage in general average is not excluded by the fact that the object of the sacrifice has not been attained.

193. Nor is the distribution of the expenses caused by damage in general average excluded by the fact of either the ship or the cargo having been entirely sacrificed for the purpose, nor by the fact that, subsequent to the average, savings have been realized out of the ship alone or the cargo alone.

194. In case a sacrifice must be made, it is the master's duty to see that no greater loss is incurred than required for the purpose. Thus, in case of jettison of cargo or throwing overboard of the ship's appurtenances, whatever is heaviest or of less value, should, as far as possible, be first thrown overboard before the lighter and more valuable goods.

If the master has caused more damage than necessary by any fault, the rule laid down in § 191 is applicable.

195. Previous to taking any measure which may cause average, the master should, if

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whom the owner is responsible by virtue of § 8, the latter shall not have any claim to compensation for the loss he sustains.

If the master or anyone else who by virtue of his position on board and acting on the master's behalf, has committed an error of judgment in estimating the nature of the danger, or erred in the choice of the measures to avoid the danger, such error shall not preclude the apportionment of average, but the owner cannot claim compensation for the loss he may have sustained, unless the error committed must be regarded as excusable under the then existing circumstances.

Whoever thus loses his right to compensation, or who, in consequence of an error committed by a third person, has had to pay an average contribution, can claim re-imbursement from the person on whom the responsibility lies.

192. Distribution under general average is not precluded from the fact that the intended object which necessitated the sacrifice was not attained by such sacrifice.

193. Distribution under general average shall not be precluded from the fact that the sacrifice has comprised either the whole of the ship or the whole of the cargo, or that the ship only, or the cargo only has been saved, either entirely or in part after the ship has come under average.

194. When a sacrifice must be made, it is the duty of the master to see that such sacrifice shall not be greater than necessary for the attainment of the object in view. Thus when jettisoning cargo or ship's apparel the heavier and least valuable articles must be, as far as practicable, thrown overboard first, rather than the lighter and more valuable goods.

If, through the erroneous conduct of the master, a greater amount of damage has been caused than necessary, the rule laid down in § 191, in so far as it may apply to the case, shall come into operation.

195. If circumstances allow of it, the master ought, before undertaking any proceeding

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to compensation in general average.

In case of error of judgment on the part of the master, or the person acting on his behalf, as regards the nature of the danger or the choosing of means to avoid it, the damage should nevertheless be apportioned as in general average; the owner of the ship, however, to forfeit his right to compensation, unless the measure may be excused by the exceptional nature of the circumstances under which it was adopted.

Any person thus forfeiting the right to compensation, or being compelled to pay contribution towards the average, shall have the right to recover his loss from the person legally responsible for the damage.

192. The apportionment of damage in general average may take place in spite of the object of the sacrifice not being attained.

193. Apportionment of damage in general average may also take place, although ship or cargo is entirely sacrificed for the purpose, or in case, subsequent to the average, either the ship alone or only the cargo is wholly or partially saved.

194. In case sacrifice must be made, it shall be the duty of the master to see that no greater loss is incurred than required for the purpose. When a jettison of cargo or the throwing of ship's appurtenances overboard takes place, it shall be observed that whatever is heavier or of less value shall be first thrown overboard, and the lighter and more valuable goods kept as long as possible, provided the danger admits of this being done.

If the master has caused more damage or loss than necessary by any fault, the law as mentioned in Art. 191 shall apply.

195. Previous to taking any measure which may lead to general average, the master

Handling, der kan medføre Havarifordeling, raadfore sig med de kyndigste og mest erfarne af Mandskabet. Beretning herom bor, saa snart ske kan, af Skipperen indføres i Dagbogen eller, hvis ingen Dagbog føres om Bord, optegnes paa anden Maade, for at kunne fremlægges ved Soforklaringen. I Beretningen skal optages alle de Omstændigheder, som kunne have Betydning for Havariets Beregning og Fordeling, navnlig Grunden til Opoffrelsen, en saa vidt muligt nøjagtig Fortegnelse over de opofrede Genstande eller anden Oplysning om Skadens Omfang.

Handling, der kan medføre Havarifordeling, raadfore sig med de kyndigste og mest erfarne af Mandskabet. Beretning herom bor, saasnart ske kan, af Skibsføreren indføres i Dagbogen eller, hvis ingen Dagbog føres ombord, optegnes paa anden Maade for at kunne fremlægges ved Sjøforklaringen. I Beretningen skal alle de Omstændigheder optages, som kan have Betydning for Havariets Beregning og Fordeling, navnlig Grunden til Opoffrelsen, en saavidt mulig nøjagtig Fortegnelse over de opofrede Gjenstande eller anden Oplysning om Skadens Omfang.

han, der faran det medgifver, de kunnigaste och mest erfarne af besättningen till rådpåläggning. Berättelse om rådpåläggningen skall, så skyndsamt ske kan, af befälhafvaren i dagboken intagas eller, der sådan icke föres, annorledes upptecknas att vid sjöförklaringen framläggas; och skall i berättelsen upptagas allt, som för haveriets utredning kan vara af betydelse, dervid särskildt bör redogöras för anledningen till uppoffringen samt meddelas en, så vidt ske kan, fullständig uppgift å de uppoffrade föremålen eller annan upplysning om skadans omfång.

196. Skade paa Skib og Tilbehør bliver at takseres af sagkyndige, efter Reglen i § 41 beskikkede Mænd paa det Sted, hvor Istandsættelsen sker, hvis denne foretages undervejs, og ellers paa det Sted, hvor Rejsen ender.

196. Skade paa Skib og Tilbehør bliver at taxeres ved lovligt Skjen paa det Sted, hvor Istandsættelsensker, hvis denne foretages underveis, og ellers paa det Sted, hvor Reisen ender (kfr. § 41).

196. Skada å fartyg eller dess tillbehör skall af besigtningmän, utsedde på sätt 41 § bestämmes, värderas å den ort, der reparation verkställles, om sådan sker under resan, men eljest å den ort, der resan slutar.

For hver enkelt Skade skal angives, hvad dens Afhjælpning vil koste, og naar nye Genstande skulle anskaffes i Stedet for de beskadigede, skal der anføres saavel, hvad de nye ville koste, som hvad de beskadigede ere værd.

For hver enkelt Skade skal der angives, hvad dens Afhjælpning vil koste, og naar nye Genstande skal anskaffes istedetfor de beskadigede, skal der anføres saavel, hvad de nye vil koste, som hvad de beskadigede er værd.

Vid värderingen skall särskildt för hvarje skada upptagas den för dess afhjelpande beräknade kostnad samt, der skadadt redskap beräknas att med nytt ersättas, såväl kostnaden för det nya, som värdet af det skadade.

Al Skade, der hidrorer fra Ælde, Brøstfældighed eller deslige, bor holdes adskilt fra den, der er lidt ved Havari, og særskilt takseres.

Al Skade, der hidrorer fra Ælde, Brøstfældighed eller deslige, bor holdes adskilt fra den, der er lidt ved Havari, og særskilt taxeres.

Skada, som härrör af fartygets ålder eller redskaps bristfällighet eller annan dylik orsak bör vid värderingen skiljas från den skada, som genom haveri tillkommit.

197. Ved Beregningen af almindeligt Havari paa Skib med Tilbehør lægges Taksationssummen til Grund, naar Skaden ikke istandsættes, eller naar Taksationssummen er mindre end det Beløb, der er medgaaet til Istandsættelsen, hvorimod de virkelige Istandsættelsesomkostninger lægges til Grund, naar disse ere mindre.

197. Ved Beregningen af almindeligt Havari paa Skib med Tilbehør lægges Taxationssummen til Grund, naar Skaden ikke istandsættes, eller naar Taxationssummen er mindre end det Beløb, der er medgaaet til Istandsættelsen, hvorimod de virkelige Istandsættelsesomkostninger lægges til Grund, naar disse er mindre.

197. Vid beräkning af skada å fartyg eller dess tillbehör utgöres skadans belopp af värderingssumman, när reparation ej verkställles eller värderingssumman understiger det belopp, som åtgått till verkställd reparation, men af verkliga reparationskostnaden, när denna understiger värderingssumman.

198. Ved Erstatning af Skade paa Jærnsbib godtgøres Beløbet fuldt ud for Skade paa Skrog samt paa Master og Rundholter af Jærn, naar Skibet paa den Tid, Havariet indtraf, ikke har været 5 Aar i Søen, regnet fra det Tidrum, da Skibet tiltraadte sin første Sørrejse. Er saadan Skade indtraadt senere,

198. Ved Erstatning af Skade paa Jærnsbib godtgøres Beløbet fuldt ud for Skade paa Skrog samt paa Master og Rundholter af Jærn, naar Skibet paa den Tid, Havariet indtraf, ikke har været 5 Aar i Sjøen, regnet fra Tiltraedelsen af dets første Reise. Er saadan Skade indtraadt senere, men inden Skibet

198. Vid ersättande af skada å jernfartyg godtgöres beloppet fullt ut för skada å skrof samt master och rundhult af jern, om fartyget vid den tid, då haveriet inträffade, icke varit fem år i sjön; timar dylik skada senare men innan fartyget varit tio år i sjön, afdrages en sjettedel för skilnad af nytt mot



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circumstances permit, consult the best informed and most experienced of the crew. A statement thereof should, as soon as possible, be entered in the logbook by the master, or otherwise be drawn up, if no logbook is kept on board, in order to be produced when the sea-protest is to be made. Everything of importance for the adjustment and distribution of the average is to be inserted in the statement, especially regarding the cause of the sacrifice, a list, as exact as possible, of all the property sacrificed, or other information as to the extent of the damage.

**196.** Damage to a ship or its apparel is to be valued by surveyors, appointed in the manner prescribed in § 41, at the place where the repairs are executed, if effected during the voyage, otherwise at the place where the voyage is terminated.

For each damage the calculated cost of repairing it shall be specially stated, and if damaged appurtenances are to be replaced by new ones, the cost of the new as well as the value of the damaged ones must also be stated.

Any damage due to the age or decay of the ship, or any other similar reason, should be kept apart from the damage sustained by the average, and specially estimated.

**197.** The estimated value shall be the basis of all calculations of general average for ship and ship's gear, in case the damage is not repaired, or the estimated value is lower than the actual cost of the repairs executed, whereas, provided they are lower, the actual costs of the repair are taken as the basis.

**198.** When compensation is given for damage to an iron ship, the amount is made good in full for any damage to hull and to masts and spars of iron, provided that the ship at the time of the average has not been five years at sea, reckoned from the date when it first put to sea. Should such

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which may entail distribution under general average, to consult the most skilled and experienced members of the crew. A record of this consultation ought to be entered by the master in the logbook, as soon as possible, or, if no logbook is kept on board be noted down in writing in some other way, in order to be produced when the maritime declaration is made. In the record there must be set forth all the circumstances which may be of importance for the adjustment and apportionment of the average, especially the purpose for which the sacrifice was made, and as accurate as possible a list of the things sacrificed or other information as to the extent of the damage.

**196.** Damage to the ship and her apparel must be estimated at a survey according to law held at the place where the repairs are effected if these are executed during the voyage, and if otherwise, at the place where the voyage ends (see § 41).

The cost of repairing each separate injury shall be stated, and when new articles have to be obtained in place of those damaged, the cost of the new and the value of the old articles shall also be stated.

All damage arising from age, decay and such like, ought to be kept separate from the damage caused by the average, and be valued separately.

**197.** In calculating a general average loss on ship and apparel, the sum awarded at the valuation shall be taken as a basis when the damage is not repaired, or when the valuation is less than the amount which has been expended on the repairs, while, on the other hand, the actual expenses of repair shall be taken as a basis when they are less than the estimate.

**198.** In compensating damage to iron ships, injury to the hull or the masts and spars of iron will be made good in full if the ship, at the time the average disaster occurred, has not been 5 years at sea reckoned from the date of the commencement of its first voyage. If such injury has occurred

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shall, in case the danger should so admit, call the best and most experienced of the crew to a council. A record of the council held shall, as soon as possible, be made in the logbook by the master, or shall otherwise be drawn up by him where no logbook is kept, in order to be produced when the protest is being extended. Everything of importance for the adjustment of the average shall be inserted in the said statement, and especially a minute statement regarding the cause of the sacrifice, and also, if possible, a complete statement of the property sacrificed, or other information as to the extent of the damage.

**196.** Any damage to a ship or her appurtenances shall be valued by surveyors, appointed in the manner prescribed in Art. 41, at the place where the repairs are executed, if effected during the voyage, but otherwise at the port where the voyage terminates.

At the valuation, the calculated cost of repairing each damage shall specially be stated, and whenever it is considered that damaged appurtenances ought to be replaced by new ones, the cost of the new, as well as the value of the old, shall also be stated.

Any damage due to the age of the ship or to the defect of the gear, or any other similar reason, should at the valuation be kept apart from the damage caused by the average.

**197.** When a damage to a ship or her appurtenances is calculated, the amount of the valuation shall be the amount of the damage, when no repairing takes place, or the valuation amount is lower than the cost of the repairs executed; when in excess, the actual costs of the repairs shall on the other hand be the amount of the damage.

**198.** When compensation is given for damage to an iron ship, the amount shall be made good in full for any damage to hull and to masts and spars of iron, if the ship at the time of the average has not been five years afloat; should such damage occur later than five, but before the expiration of

men inden Skibet har været 10 Aar i Soen, afdrages  $\frac{1}{6}$  for Forskellen mellem gammelt og nyt, og har Skibet været længere Tid i Soen, afdrages  $\frac{1}{3}$ . Skade paa Dampmaskinen erstattes fuldt ud, hvis Maskinen ikke har været 3 Aar i Brug, da Skaden indtraf; sker Skaden senere, men inden Maskinen har været 6 Aar i Brug, afdrages  $\frac{1}{6}$ , og har den været i Brug i længere Tid, afdrages  $\frac{1}{3}$ . Skade paa Master og Rundholter af Træ samt paa staaende Rigg erstattes fuldt, hvis Skibet ikke har været et Aar, og anden Skade ligesaa, hvis det ikke har været et halvt Aar i Soen; sker Skaden senere, afdrages  $\frac{1}{3}$ ; dog gøres intet Afdrag for Ankere, og for Ankerkættinger afdrages kun  $\frac{1}{6}$ .

Er Skibet et Træskib, erstattes Skade paa Skroget fuldt ud, naar Skibet ikke har været 2 Aar i Soen, da Havariet indtraf; er Skaden sket senere, afdrages  $\frac{1}{3}$  for Forskellen mellem gammelt og nyt. Anden Skade erstattes saaledes, som ovenfor er bestemt med Hensyn til Jærnskibe.

I den saaledes beregnede Erstatningssum afdrages Værdien af de Genstande, der erstattes med nye, saaledes som denne Værdi er fastsat i Taksationsforretningen, eller, hvis Auktionssalg har fundet Sted, Netoudbyttet af Salget.

Skal Skibet have ny Metalhud, beregnes Erstatningen saaledes, at der fra, hvad det koster at underlægge en ny Hud af samme Materiale og af samme Vægt, som den gamle havde, da den var ny, fradrages Metalværdien af den beskadigede Hud, hvorefter Restbeløbet godtgøres med et Fradrag for Kobber eller Yellowmetal af  $\frac{1}{60}$ , og for Zink eller andet Metal af  $\frac{1}{30}$ , for hver hel Maaned, beregnet til 30 Dage, som er forløben efter, at den Hud, som skal erstattes, blev paasat Skibet. Har en Hud af Kobber eller Yellowmetal ligget mere

har været 10 Aar i Sjoen, afdrages  $\frac{1}{6}$  for Forskjellen mellem Gammelt og Nyt, og har Skibet været længere Tid i Sjoen, afdrages  $\frac{1}{3}$ . Skade paa Dampmaskinen erstattes fuldt ud, hvis Maskinen ikke har været 3 Aar i Brug, da Skaden indtraf; sker Skaden senere, men inden Maskinen har været 6 Aar i Brug, afdrages  $\frac{1}{6}$ , og har den været i Brug i længere Tid, afdrages  $\frac{1}{3}$ . Skade paa Master og Rundholter af Træ samt paa staaende Rigg erstattes fuldt, hvis Skibet ikke har været et Aar, og anden Skade ligesaa, hvis det ikke har været et halvt Aar i Sjoen; sker Skaden senere, afdrages  $\frac{1}{3}$ ; dog gøres intet Afdrag for Ankere, og for Ankerkættinger afdrages kun  $\frac{1}{6}$ .

Er Skibet et Træskib, erstattes Skade paa Skroget fuldt ud, naar Skibet ikke har været 2 Aar i Sjoen, da Havariet indtraf; er Skaden sket senere, afdrages  $\frac{1}{3}$  for Forskjellen mellem Gammelt og Nyt. Anden Skade erstattes saaledes, som ovenfor er bestemt med Hensyn til Jærnskibe.

I den saaledes beregnede Erstatningssum afdrages Værdien af de Gjenstande, der erstattes med nye, saaledes som denne Værdi er fastsat i Taksationsforretningen, eller, hvis Auktionssalg har fundet Sted, Netoudbyttet af Salget.

Skal Skibet have ny Metalhud, beregnes Erstatningen saaledes, at der fra, hvad det koster at underlægge en ny Hud af samme Materiale og af samme Vægt, som den gamle havde, da den var ny, fradrages Metalværdien af den beskadigede Hud, hvorefter Restbeløbet godtgøres med et Fradrag for Kobber eller Yellowmetal af  $\frac{1}{60}$ , og for Zink eller andet Metal af  $\frac{1}{30}$ , for hver hel Maaned, beregnet til 30 Dage, som er forløben, efterat den Hud, som skal erstattes, blev paasat Skibet. Har en Hud af Kobber eller Yellowmetal ligget mere

gammelt och, om fartyget varit längre tid i sjön, en tredjedel. Skada å ångmaskin ersättes fullt ut, om maskinen icke varit i bruk tre år, när skadan skedde; timar skada senare men innan maskinen varit sex år i bruk, afdrages en sjettedel och, om den varit i bruk längre tid, en tredjedel. Skada å master och rundhult af trä samt å stående rigg ersättes fullt ut, om fartyget icke varit ett år i sjön, samt skada å ångpanna och annan skada ock fullt ut, om fartyget icke varit ett halft år i sjön, när haveriet inträffade; timar skada senare, afdrages en tredjedel, dock med undantag för ankare, som ersättes fullt ut, och för ankarketting, för hvilken afdrag sker med endast en sjettedel.

År fartyget af trä, ersättes skada å skrofvat fullt ut, om fartyget icke varit i sjön två år, när haveriet inträffade; timar skada senare, afdrages en tredjedel för skilnad af nytt mot gammalt. Annan skada ersättes såsom för jernfartyg är stadgadt.

Från det sålunda beräknade ersättningsbeloppet skall der efter afdrag ske för sådant, som beräknats skola med nytt ersättas, med det vid värderingen derå utrönda värde eller, der det å auktion försålt, med behållna försäljningsbeloppet.

Skall fartyget förses med ny metallbeklädnad, beräknas ersättningen sålunda, att, sedan från kostnaden för anbringande af ny beklädnad af samma ämne, som den skadade, och af samma vikt, denna haft såsom ny, afdragits den skadade beklädnadens metallvärde, öfriga beloppet godtgöres med afdrag: för beklädnad af koppar eller gul metall af en sextiondedel och för beklädnad af annan metall af en trettiondedel för hvarje hel månad, räknad till trettio dagar, som förflutit efter det den skadade beklädnaden åsattes fartyget. Har bekläd-

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damage be sustained later, yet before the ship has been 10 years at sea,  $\frac{1}{6}$  is to be deducted for the difference between old and new, and if the ship has been at sea for a longer period,  $\frac{1}{3}$  is deducted. Any damage to a ship's engines is compensated in full, if the engines had not been in use three years, when the damage was sustained; if the injury is sustained later, yet before the engines have been six years in use,  $\frac{1}{6}$  is to be deducted, and if they have been in use for more than 6 years,  $\frac{1}{3}$  shall be deducted. Any damage to masts and spars of wood, as well as to the standing rigging, is compensated for in full, if the ship has not been a year, and other damage also if the ship has not been half a year at sea; if the damage is done later,  $\frac{1}{3}$  is to be deducted; for anchors, however, no deduction is made, and for chains only  $\frac{1}{6}$ .

In case of a wooden ship the damage to the hull is compensated in full, if the ship has not been two years at sea, when the average occurred; if the damage is sustained later,  $\frac{1}{3}$  is to be deducted for the difference between old and new. Any other damage shall be compensated according to the above-mentioned rules regarding iron ships.

From the indemnification thus estimated is to be deducted the value of the things which are replaced by new ones, at the rate settled at the valuation, or, if an auction has taken place, the net proceeds of the sale.

If the ship is to be metallised anew, the compensation is to be calculated in the following manner, i. e.: After the metal-value of the damaged sheathing having been deducted from the cost of re-metallising the ship with the same material of the same weight as the old sheathing when new, the remaining amount is compensated with the following deductions, viz.: for copper or yellow metal one sixtieth, and for zinc or other metal one thirtieth for each full month of 30 days since the sheathing which is to be replaced, was

later, but before the ship has been 10 years at sea, one sixth shall be deducted as the difference between new and old, and if the ship has been at sea for a longer period, then one third shall be deducted. Damage to the engines will be made good in full, if they had been in use for a period of less than 3 years when the injury occurred; if the damage occurs later but before they have been in use for 6 years, one sixth shall be deducted; and if in use beyond that time the deduction shall amount to one third. Damage to wooden masts and spars, and standing rigging, will be made good in full if the vessel has been under 1 year at sea, and other damage also if the vessel has been under half a year at sea; if the damage should occur later, one third shall be deducted, but no deduction will be made for anchors, and only one sixth will be deducted for chain cables.

If the ship is a wooden one, the damage to the hull shall be made good in full if the ship had not been 2 years at sea when the injury occurred; if the damage has been sustained later, the deduction shall amount to one third as the difference between new and old. Other damage will be made good in the same proportion as stated above in respect to iron vessels.

From the amount of compensation thus calculated there shall be deducted the value of the articles which have been replaced by new ones according to the value set on them by the surveyors, or, if sold by auction, the net profit of the sale.

If the vessel has been found to require new metal sheathing the compensation shall be calculated in such a way that, from the sum it would cost to sheathe the ship with new sheathing of the same material and weight as that of the old when new, shall be deducted the metallic value of the damaged sheathing, after which the sum thus left shall be made good with a deduction of one sixtieth for copper or yellow metal, and of one thirtieth for zinc or other metal for each entire month of 30 days which has expired since the sheathing

ten years, one sixth shall be deducted, new for old, and one third if the ship has been afloat beyond that time. Any damage to a ship's engines shall be compensated in full if the engines have not been in use for three years when the damage occurs; if happening later, but before the engines have been six years in use, one sixth shall be deducted, and if they have been in use for more than six years, one third shall be deducted. Any damage to masts and spars of wood and to standing gear shall be made good in full if the ship has not been one year afloat, and damage to boiler and any other damage shall also be paid in full if the ship has not been afloat half a year when the average took place; if any damage occurs later, one third shall be deducted, with the exception however of anchors, which are compensated in full, and of cables, for which one sixth only is to be deducted.

In case of a wooden ship the damage to the hull shall be compensated in full, if the ship has not been two years afloat when the average occurred; if the damage takes place at any subsequent time, one third is to be deducted, new for old. Any other damage shall be compensated according to the rules regarding iron ships.

From the compensation amount, thus estimated, deduction of the value found at the survey, or with the net proceeds, if sold by action, shall thereupon be made for whatever is calculated to be replaced by new.

If the ship is to be metallised anew, the compensation is to be calculated in the following manner, i. e. after the metal value of the damaged sheathing has been deducted from the cost of re-metallising the ship with the same material, having the same weight as the damaged plates, when new, the remaining amount shall be made good with the following deductions: i. e. for copper or yellow metal one sixtieth, and for any other metal one thirtieth for each full month of thirty days since the damaged metal was put on the ship. If

end 5 Aar under og en Hud af andet Metal mere end  $2\frac{1}{2}$  Aar, gives ingen Erstatning.

199. Er Skibet enten helt gaaet til Grunde som Følge af almindeligt Havari, eller har det lidt saa stor Skade ved dette, at det erklæres at være uistandsætteligt, kommer den Værdi, Skibet i Opofrelsesøjeblikket maa antages at have haft, til Erstatning med Fradrag af Udbyttet af, hvad der maatte være reddet.

200. Erstatningen for Varer, der ere tabte ved et almindeligt Havari, beregnes efter gangbar Pris for saadant Gods paa Bestemmelsesstedet ved Skibets Ankomst dertil, eller dersom det øvrige Gods ikke naar frem til Bestemmelsesstedet, efter Prisen paa det Sted, hvor Rejsen ender, dog med Fradrag af Fragt, Told og andre Omkostninger, som bespares for Ejeren derved, at Godset ikke naar frem til Bestemmelsesstedet.

Kan den gangbare Pris ikke paa anden Maade oplyses, bliver Værdien at fastsætte ved Skøn af sagkyndige Mænd.

Er Godset solgt i Nødhavn, kan det altid fordres erstattet med mindst det Beløb, som er indvundet ved Salget.

201. Ere Varer beskadigede ved et almindeligt Havari, regnes som Erstatning Forskjellen mellem Værdien i ubeskadiget Stand, bestemt paa den i foregaaende Paragraf angivne Maade, og de beskadigede Varers Værdi med det i samme Paragraf bestemte Afdrag. Den sidstnævnte Værdi ansættes til Nettoudbyttet af de beskadigede Varer, saafremt de ere solgte, inden Havariet opgøres, men bestemmes ellers ved Skøn af sagkyndige Mænd.

202. Have de Varer, der ere tabte eller beskadigede ved et

end 5 Aar under og en Hud af andet Metal mere end  $2\frac{1}{2}$  Aar, gives ingen Erstatning.

199. Er Skibet enten helt gaaet tilgrunde som Følge af almindeligt Havari, eller har det ved Havariet lidt saa stor Skade, at det erklæres for uistandsætteligt, kommer den Værdi, Skibet i Opofrelsesøjeblikket maa antages at have havt, til Erstatning med Fradrag af Udbyttet af, hvad der maatte være reddet.

200. Erstatningen for Varer, der er tabte ved et almindeligt Havari, beregnes efter gangbar Pris for saadant Gods paa Bestemmelsesstedet ved Skibets Ankomst dertil, eller, dersom det øvrige Gods ikke naar frem til Bestemmelsesstedet, efter Prisen paa det Sted, hvor Rejsen ender, dog med Fradrag af Fragt, Told og andre Omkostninger, som bespares for Ejeren derved, at Godset ikke naar frem til Bestemmelsesstedet.

Kan den gangbare Pris ikke paa anden Maade oplyses, bliver Værdien at fastsætte ved lovligt Skøn.

Er Godset solgt i Nødhavn, kan det altid fordres erstattet med mindst det Beløb, som er indvundet ved Salget.

201. Er Varer beskadigede ved et almindeligt Havari, regnes som Erstatning Forskjellen mellem Værdien i ubeskadiget Stand, bestemt paa den i foregaaende Paragraf angivne Maade, og de beskadigede Varers Værdi med det i samme Paragraf bestemte Afdrag. Den sidstnævnte Værdi ansættes til Nettoudbyttet af de beskadigede Varer, saafremt de er solgte, inden Havariet opgøres, men bestemmes ellers ved lovligt Skøn.

202. Har de Varer, der er tabte eller beskadigede ved et

nad af koppar eller gul metall under mer än fem år och beklädnad af annan metall under mer än två och ett halft år funnits å fartyget, ersättes den icke.

199. Har fartyg i gemensamt haveri antingen gått helt och hållet förloradt eller lidit så betydlig skada, att det förklaras icke vara istandsättligt, utgår ersättningen med det belopp, hvartill fartygets värde antages hafva uppgått vid den tid, då uppoffringen skedde, med afdrag, der något blifvit bergadt, af dettas behållna värde.

200. Ersättning för gods, som i gemensamt haveri uppförats, beräknas efter gångbart pris å sådant gods i bestämmelseorten, när fartyget dit anländer, eller, om det öfriga godset ej dit framkommer, efter priset å den ort, der resan slutar, dock med afdrag af frakt, tull och öfriga omkostnader, som varda egaren besparade. Har godset blifvit i nödhavn försåldt och understiger den beräknade ersättningen det belopp, som motsvarar behållna köpeskillingen med afdrag för den besparade frakten, skall sistnämnda belopp i haveriet ersättas.

Kan ej gångbart pris å godset bestämmas, utränes värdet genom uppskattning af sakkunnige män, utsedde på sätt 41 § stadgar.

201. Gods, som i gemensamt haveri blifvit skadadt, ersättes med skilnaden mellan värdet å godset i oskadadt tillstånd, utränt på sätt 200 § bestämmer, och värdet å godset i skadadt skiek med de i samma § stadgade afdrag. Sistnämnda värde utgöres af behållna försäljningsbeloppet, der godset före haveriets utredning blifvit försåldt, men bestämmas eljest genom uppskattning af sakkunnige män, utsedde på sätt 41 § stadgar.

202. Har gods, som gått förloradt eller skadats i gemen-

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put on the ship. If a sheathing of copper or yellow metal has been on the ship for more than 5 years, and a sheathing of any other metal for more than 2½ years, no compensation is given.

**199.** If through general average accident the ship is either a complete wreck, or has been damaged to such an extent that it is declared irreparable, the amount of compensation paid shall be the estimated value of the ship at the time the loss took place, with the deduction of the value of whatever may have been saved.

**200.** The compensation for goods lost through general average is calculated according to the current prices for such goods at the port of destination on the ship's arrival there; or, should the remainder of the cargo not arrive at its destination, after the current price at the place where the voyage terminates; freight, custom-duties and other expenses, which the owner may save by the fact that the goods do not reach their destination, shall, however, be duly deducted.

If the current price cannot otherwise be found, the value shall be settled by a survey of experts.

If the goods have been sold in a port of refuge, the amount at least which came in by the sale may be claimed in compensation.

**201.** For goods damaged by general average the compensation to be made shall amount to the difference between the value of the goods in undamaged condition, as found in the manner prescribed in the preceding paragraph (Article), and the value of the damaged goods less the deductions enacted by the same paragraph (Article). Should the damaged goods have been sold previous to the adjustment of the average, the net proceeds of the sale shall represent the latter value, which otherwise shall be fixed by a survey of experts.

**202.** If goods, lost or damaged through general average,

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which shall be renewed was laid on. If the ship has carried her copper or yellow metal sheathing for more than 5 years or her sheathing of other metal for more than 2½ years, no compensation will be allowed.

**199.** If a ship in consequence of general average has either been totally lost, or has sustained such serious damage that the surveyors declare it unfit for repair, then the value which the ship at the moment the sacrifice took place must be supposed to have had, will be taken as the amount of compensation to be awarded, after deduction of the proceeds derived from what may have been saved.

**200.** Compensation for goods lost in a general average disaster shall be calculated according to the current price for such goods at the port of destination on the ship's arrival there, or, if the remaining goods do not reach the port of destination, according to the prices ruling in the port where the voyage is terminated, but with the deduction of freight, duty and other expenses which may be saved by the owner of the cargo in consequence of the goods not reaching their port of destination.

If the current prices cannot be found out in any other way the value shall be fixed by an estimate according to law.

If the goods have been sold in a port of refuge, compensation on them to at least the amount of the net profits of the sale may always be claimed.

**201.** If goods have been damaged through general average, the difference between the value of such goods in an undamaged condition, computed in the manner mentioned in the preceding paragraph (Article), and the value of the damaged goods with the deductions prescribed in the same paragraph (Article), shall be reckoned as compensation. The last mentioned value shall be fixed at the net profit derived from the damaged goods, provided that they have been sold before the average has been adjusted, but, otherwise, it shall be fixed by an estimate according to law.

**202.** If goods that were lost or damaged through general

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copper or yellow metal has been on the ship for more than five years and any other metal for more than two years, no compensation shall have to be made.

**199.** If in general average the ship is either totally lost, or damaged to such an extent that she is declared a constructive total loss, the amount of the compensation paid shall be the estimated value of the ship at the time the loss took place, with the deduction of the net value of whatever may have been saved.

**200.** Compensation for goods sacrificed in general average shall be calculated at the current prices for such goods at the port of destination on the ship's arrival there, or, should the remainder of the cargo never arrive at such port, at the prices ruling at the place where the voyage terminates; freight, custom-duties and other expenses, which may be spared the owner of the cargo, shall however be duly deducted. If the goods have been sold at a port of distress and the calculated compensation is lower than the amount of the net proceeds of the purchase less the freight saved, the latter amount shall be made good in general average.

If a current price cannot be fixed, the value shall be ascertained by experts appointed in the manner prescribed by Art. 41.

**201.** For goods damaged in general average the compensation to be made shall amount to the difference between the value of the goods in an undamaged state, as found in the manner prescribed by Art. 200, and the value of the goods in a damaged condition, less the deductions enacted by the same Article. Should the goods have been sold previous to the adjustment of the average, the proceeds of the sale shall represent the latter value, which shall otherwise be decided by experts appointed in the manner enacted in Art. 41.

**202.** If cargo, lost or damaged in general average, has

almindeligt Havari, allerede forinden været forringede i Værdi som Følge af særligt Havari, indre Bedærvelse eller paa anden Maade, eller ere de ved et almindeligt Havari beskadigede Varer blevne yderligere forringede i Værdi ved Begivenheder, der ere det almindelige Havari uvedkommende, bliver et til saadan Forringelse svarende Beløb at afdrage i Erstatningsbeløbet. Afdragets Størrelse fastsættes ved Skøn af sagkyndige Mænd, ved hvilket der tages særligt Hensyn til den Skade, som andre Varer af samme eller lignende Art, der ikke ere blevne beskadigede ved det almindelige Havari, have lidt ved samme Lejlighed og af samme Aarsag.

**203.** For Varer, paa hvilke Konnossement ikke er udstedt, og om hvis Indladning heller ikke fyldestgørende Oplysning gives i Manifest, Ladningsbog eller paa anden Maade, gives ingen Erstatning i almindeligt Havari.

For Skippers, Mandskabs og Passagerers Klæder og Rejsefornödenheder gives Erstatning, naar de oplyses at være tabte ved almindeligt Havari.

**204.** Fragt for Gods, som er gaaet tabt ved et almindeligt Havari, eller som er solgt i Nødhavn til Dækning af Havariomkostninger, godtgøres i Havarieregningen med det samme Beløb, som vilde have været at erlægge af det, hvis det var forblevet i Skibet indtil Godsets Bestemmelsessted eller, hvis Rejsen afbrydes, indtil det Sted hvor Rejsen ender. Fra Beløbet af den tabte Fragt drages de særlige Omkostninger, som maatte være besparede for Rederen derved, at Godset er blevet opofret eller solgt.

**205.** Retten til Erstatning bortfalder helt eller delvis, naar en Gjenstand, efter først at være beskadiget ved et almindeligt Havari, senere ødelægges eller lider Skade ved et særligt Havari, dersom det med Sikkerhed kan skønnes, at Tabet, selv om det almindelige Havari ikke havde fundet Sted, vilde være

almindeligt Havari, allerede forinden været forringede i Værdi som Følge af særligt Havari, indre Bedærvelse eller af anden Aarsag, eller er de ved et almindeligt Havari beskadigede Varer blevne yderligere forringede i Værdi ved Begivenheder, der er det almindelige Havari uvedkommende, bliver et til saadan Forringelse svarende Beløb at afdrage i Erstatningsbeløbet. Afdragets Størrelse fastsættes ved lovligt Skøn, ved hvilket der tages særligt Hensyn til den Skade, som andre Varer af samme eller lignende Art, der ikke er blevne beskadigede ved det almindelige Havari, har lidt ved samme Leilighed og af samme Aarsag.

**203.** Varer, for hvilke Konnossement ikke er udstedt, og om hvis Indladning heller ikke fyldestgørende Oplysning gives i Manifest, Ladningsbog eller paa anden Maade, erstattes ikke i almindeligt Havari.

For Skibsførers, Mandskabs og Passagerers Klæder og Reisefornödenheder gives Erstatning naar de oplyses at være tabte ved almindeligt Havari.

**204.** Fragt for Gods, som er gaaet tabt ved et almindeligt Havari, eller som er solgt i Nødhavn til Dækning af Havariomkostninger, godtgøres i Havarieregningen med det samme Beløb, som vilde have været at erlægge af det, hvis det var forblevet i Skibet indtil Godsets Bestemmelsessted, eller, hvis Rejsen afbrydes, indtil det Sted hvor Rejsen ender. Fra Beløbet af den tabte Fragt drages de særlige Omkostninger, som maatte være sparede for Rederen derved, at Godset er blevet opofret eller solgt.

**205.** Retten til Erstatning bortfalder helt eller delvis, naar en Gjenstand, efter først at være beskadiget ved et almindeligt Havari, senere ødelægges eller lider Skade ved et særligt Havari, dersom det med Sikkerhed kan skønnes, at Tabet, selv om det almindelige Havari ikke havde fundet Sted, vilde være

samt haveri, förut minskats i värde till följd af enskildt haveri eller genom förskämning eller af annan orsak, eller har gods, som skadats i gemensamt haveri, därefter minskats i värde till följd af omständigheter, hvilka ej berott af haveriet; då skall från ersättningsbeloppet afdragas ett mot sådan minskning svarande belopp. Afdragets storlek bestämmes genom uppskattning af sakkunnige män, utsedde på sätt 41 § stadgar; skolande dervid särskild hänsyn tagas till skada, som vid samma tillfälle eller af samma orsak träffat annat gods af dylikt slag, hvilket icke i det gemensamma haveriet skadats.

**203.** I gemensamt haveri ersättes icke gods, derå konnossement icke utfärdats och om hvars intagande i fartyget icke heller genom anteckning å manifest eller i lastbok eller annorledes tillförlitlig upplysning kan vinnas; deek njute befälvare, besättning och passagerare ersättning för kläder och reseförnödenheter, när de med ed styrka hvad deraf i haveriet förlorats.

**204.** Frakt för gods, som förlorats i gemensamt haveri eller i nödhamn förtrytats till anskaffande af medel för gemensamt behof, ersättes med det belopp, som skolat utgå, derest godset funnits i behåll när fartyget ankommer till den ort, der godset skolat aflemnas, eller, om resan förut afbrytes, till den ort, der resan sålunda slutar. Från ersättningsbeloppet afdragas de omkostnader, som varda redaren besparade der igenom att godset blifvit uppoffradt eller såldt.

**205.** Har föremål, som skadats i gemensamt haveri, därefter gått förloradt eller lidit ytterligare skada i enskildt haveri och kan för säkert antagas, att, der det gemensamma haveriet icke föregått, den derigenom uppkomna förlust i stället skulle hafva till större eller mindre del vållats genom

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have already diminished in value on account of particular average or deterioration, or for any other reason, or if any goods damaged by general average have subsequently decreased in value owing to circumstances in no way connected with the average, an amount corresponding to such diminution shall be deducted from the indemnification. The amount to be deducted shall be fixed by an estimate of experts, according to which estimate the damage done on the same occasion and from the same cause to other goods of similar description, which have not been injured by the general average, is taken into special consideration.

**203.** For goods in respect of which no bill of lading has been issued, or regarding the loading of which no reliable information is to be had either by any statement in the manifest, cargo book, or otherwise, no compensation is given in case of general average.

The master, crew and passengers shall, however, be allowed compensation for clothing and travelling requisites, provided that they have been lost by general average.

**204.** Freight for goods which have been lost by general average, or been sold at a port of refuge to meet expenses caused by average, shall in the calculation of average be compensated with the same amount, which would have been paid for the goods if they had remained on board until the ship's arrival at the port for which the goods were destined, or, in case the voyage is interrupted, at the place where the voyage terminates. Any expense which the ship-owners may have spared in consequence of the goods having been sacrificed or sold, shall be deducted from the amount of the freight lost.

**205.** The right to obtain compensation is lost, wholly or partially, if anything which has first been damaged by general average is subsequently destroyed or injured by any particular average, in case it may be assumed with certainty that the loss, even if the general average had not pre-

## Norwegian Text.

average had previously lost in value by a particular average, or by inherent defects (vice propre), or from some other cause, or if the goods damaged by general average have been further lowered in value from causes not connected with the general average, then an amount equal to the loss in value arising therefrom shall be deducted from the amount of the compensation. The amount thus to be deducted shall be fixed by a survey according to law at which special regard shall be taken of the damage which other goods of the same or a similar description, but not damaged by general average, have sustained on the same occasion and from the same causes.

**203.** No compensation under general average will be allowed for goods for which no bill of lading has been issued, and concerning the shipment of which no satisfactory information is to be obtained from the manifest, cargobook or from any other source.

Compensation will be awarded for the clothing and travelling requisites of the master, crew, and passengers when it is shewn that these articles have been lost under general average.

**204.** The freight for goods which have been lost through general average, or which have been sold in a port of refuge to cover average expenses shall, in the average statement, be awarded with the same amount as would have had to have been paid if the goods had remained in the ship until their arrival at the port of their destination, or, if the voyage was interrupted, at the port where the voyage terminated. From the amount of the freight lost the special expenses which the shipowner may have saved by the sacrifice or sale of the goods shall be deducted.

**205.** The right to compensation under general average shall be wholly or partly lost when an article, after having been first damaged by general average, is afterwards destroyed or sustains damage through particular average, if it can be seen with certainty that the loss, even if general

## Swedish Text.

previously diminished in value on account of particular average, or through deterioration, or for any other reason, or if any goods damaged in general average have subsequently decreased in value owing to circumstances in no way dependent upon the average, an amount corresponding to such diminution shall be deducted from the compensation amount. The amount to be deducted shall be fixed by a valuation by experts appointed in the manner enacted in Art. 41. When such valuation takes place, particular attention shall be paid to damage done on the same occasion, or for the same reason, to other goods of similar description, which have not been damaged in general average.

**203.** In general average, no compensation shall be made for cargo in respect of which no bill of lading has been issued, or regarding the loading of which no reliable information is obtainable, either by any statement in the manifest or the cargo-book, or otherwise. The master, crew and passengers shall, however, be allowed compensation for clothing and travelling effects, when the loss thereof in the average is confirmed on oath.

**204.** Freight for cargo lost in general average, or sold at a port of distress for the procuring of means for joint requirements, shall be compensated with the amount which would have been paid, should the goods have existed when the ship arrives at the port where the goods would have had to be delivered, or, in case the voyage is discontinued, at the port of termination of the voyage. Any expense which may be spared the owner of the ship on account of the sacrifice or selling of the goods, shall have to be deducted from the compensation amount.

**205.** If anything which has been damaged in general average is subsequently lost, or suffers additional damage in particular average, and it can be assumed with certainty that the loss would have been sustained, wholly or partially, in the latter average, had not the general average previously oc-



## Dansk Text.

blevet helt eller delvis bevirket ved det senere særlige Havari.

Paa samme Maade bortfalder eller nedsættes Havariestatningen, naar det med Sikkerhed kan skønnes, at Gjenstande, der ere tabte ved et almindeligt Havari, vilde være blevne tilintetgjorte eller beskadigede ved et senere særligt Havari, saafremt de vare forblevne om Bord.

**206.** Skade, der hidrører dels fra et almindeligt Havari, dels fra et særligt Havari, ligesom Omkostninger, der ere fælles for begge, blive efter billigt Skøn at fordele mellem begge Havarier.

**207.** Skibet bidrager til almindeligt Havari efter:

1. den Værdi, hvortil det ved Ankomsten til det Sted, hvor Rejsen ender, takseres af sagkyndige, efter Reglen i § 41 beskikkede Mænd, og
2. Det Beløb, der i Havariberegningen godtgøres for Skade paa Skibet, dog kun for saa vidt Istandsættelse af Skaden ikke allerede har fundet Sted.

Har Skibet, efter at det almindelige Havari indtraf, modtaget Forbedringer, eller er der foretaget Istandsættelse af Skade, der ikke hidrører fra almindeligt Havari, bliver Skibets takserede Værdi at nedsætte med det Beløb, hvortil saadan Forbedring eller Istandsættelse vurderes.

**208.** Ladningen bidrager til almindeligt Havari efter:

1. Værdien af det Gods, som fandtes om Bord, da Havariet indtraf, og som er i Behold, naar Rejsen ender, hvilken Værdi bestemmes overensstemmende med de i §§ 200 og 201 givne Regler;
2. De Beløb, der beregnes som Erstatning for Gods, som er opofret eller beskadiget ved almindeligt Havari paa Rejsen, samt
3. De Erstatningssummer, som tilkomme en Ladningsejer

## Norsk Text.

bleven helt eller delvis bevirket ved det senere særlige Havari.

Paa samme Maade bortfalder eller nedsættes Havariestatningen, naar det med Sikkerhed kan skønnes, at Gjenstande, der er tabte ved et almindeligt Havari, vilde være blevne tilintetgjorte eller beskadigede ved et senere særligt Havari, saafremt de var forblevne ombord.

**206.** Skade, der hidrører dels fra et almindeligt Havari, dels fra et særligt Havari, ligesom Omkostninger, der er fælles for begge, bliver efter et billigt Skøn at fordele mellem begge Havarier.

**207.** Skibet bidrager til almindeligt Havari efter

1. den Værdi, hvortil det ved Ankomsten til det Sted, hvor Rejsen ender, taxeres ved lovligt Skøn, og
2. Det Beløb, der i Havariberegningen godtgøres for Skade paa Skibet, dog kun, forsaavidt Istandsættelse af Skaden ikke allerede har fundet Sted.

Har Skibet, efterat det almindelige Havari indtraf, modtaget Forbedring, eller er der foretaget Istandsættelse af Skade, der ikke hidrører fra almindeligt Havari, bliver Skibets taxerede Værdi at nedsætte med det Beløb, hvortil Forbedringen eller Istandsættelsen vurderes.

**208.** Ladningen bidrager til almindeligt Havari efter:

1. Værdien af det Gods, som fandtes om Bord, da Havariet indtraf, og som er i Behold, naar Rejsen ender, hvilken Værdi bestemmes overensstemmende med de i §§ 200 og 201 givne Regler,
2. De Beløb, der beregnes som Erstatning for Gods, som er opofret eller beskadiget ved almindeligt Havari paa Rejsen, samt
3. De Erstatningssummer, som tilkommer en Ladningsejer

## Svensk text.

det senare haveriet; då ersättes icke skadan i det gemensamma haveriet, eller ock nedsättes ersättningsbeloppet, efter ty i hvarje särskildt fall kan finnas skäligt. Lag samma vare, der föremål, som i gemensamt haveri förlorats, skulle hafva gått förloradt eller skadats i ett senare inträffadt enskildt haveri, derest föremålet då ännu funnits ombord.

**206.** Skada och förlust, som är att hänföra dels till gemensamt och dels till enskildt haveri, samt kostnader, som äro för båda haverierna gemensamma, skola mellan dessa efter billighet fördelas.

**207.** Fartyget deltagar i gäldande af gemensamt haveri efter:

1. fartygets värde, utränt genom besigtning i den ordning, 41 § bestämmer, vid fartygets ankomst till den ort, der fartyg och last skiljas åt; och
2. Värdet af den skada å fartyget, hvilken beräknas till ersättande i gemensamt haveri, så vidt reparation af samma skada icke egt rum.

Har, efter det haveriet inträffade, fartyget undergått förbättring, eller reparation egt rum af skada, som ej uppkommit i gemensamt haveri, skall från fartygets vid besigtningen utränta värde afdragas det värde, hvortill sådan förbättring eller istandsättning vid besigtningen uppskattas.

**208.** Lasten deltagar i gäldande af gemensamt haveri efter:

1. Värdet af allt det gods, som vid haveritillfället fanns ombord och som finnes i behåll när godset skiljes från fartyget, hvilket värde för oskadadt gods utränes på sätt i 200 § och för skadadt gods på sätt i 201 § stadgas;
2. Det belopp, hvilket tillkommer lastegaren såsom ersättning för gods, uppoffradt eller skadadt i gemensamt haveri under resan; och
3. Det belopp, redaren är pliktig att till lastegaren utgifva



## Danish Text.

viously occurred, would have been wholly or partially brought about by the subsequent particular average.

The compensation for the average is equally lost or reduced, if it may be assumed with certainty that goods which have been lost by general average, would have been destroyed or damaged by subsequent particular average, should they still have remained on board.

**206.** Any damage, occasioned partly by a general, partly by a particular average, as well as expenses incurred in the two averages conjointly, shall be fairly divided between the two.

**207.** The ship is liable for a share of the expenses arising from general average, according to:

1. The value at which, on its arrival at the port of destination, it is rated by experts, appointed in conformity with the regulations in § 41;
2. The amount which, in the calculation of the average, is allowed as compensation for damage to the ship, but only if no repairing of the said damage has already taken place.

In case of any improvement having been made to the ship subsequent to the general average, or any repairs effected of damage, which has not been sustained by general average, the estimated value of such improvements or repairing shall be deducted from the estimated value of the ship.

**208.** The cargo is liable for a share of the expenses caused by general average, according to:

1. The value of the goods which were found on board when the average occurred, and still remain when the voyage is terminated, this value being determined according to the regulations of §§ 200 and 201;
2. The amount calculated as compensation for goods sacrificed or damaged by general average during the voyage, and
3. The amounts for which the owner is in debt to a cargo-

## Norwegian Text.

average had not occurred, would have been wholly or partly caused through the subsequent particular average.

In the same way the general average compensation shall be reduced or lapse if it can be perceived with certainty, that articles lost through general average would have been destroyed or damaged through subsequent particular average had they still been on board.

**206.** Damage caused partly through general average and partly through particular average, as well as the expenses common to both averages, shall be divided between the two averages in accordance with a reasonable estimate.

**207.** The ship shall contribute to the general average in proportion to:

1. The value placed upon it at a survey according to law on arrival at the port where the voyage ends, and
2. The amount which in the average statement is awarded for damage done to the ship, but only provided the damage has not already been repaired.

If the ship, after the general average occurred, has been improved, or repaired damage which had not been caused through general average, the estimated value of the ship shall be reduced by the amount at which such improvements or repairs are valued.

**208.** The cargo shall contribute to the general average in proportion to:

1. The value of the goods which were on board when the general average occurred and which still were on board in safety when the voyage terminated, which value shall be fixed in accordance with the rules given in §§ 200 and 201;
2. The amount which is calculated as compensation for goods sacrificed or damaged through general average on the voyage, and
3. The amount of compensation which the cargo-owner

## Swedish Text.

curring, the damage shall either not be compensated in the general average, or else the compensation amount shall be reduced so far as in each case it may be proved proper. The same law shall apply, if anything, lost in general average, would have been lost or damaged in any subsequent particular average, should the property have been still remaining on board.

**206.** Any damage and loss which is to be referred partly to general, partly to particular average, and any expense incurred in the two averages jointly, shall be equitably divided between the two.

**207.** The ship participates in the payment of general average in the following proportion, i. e.

1. The ship's value on her arrival at the port where ship and cargo separate, ascertained by a survey in pursuance of Art. 41.

2. The amount of the damage to the ship calculated to be compensated in general average, provided no repairing of the said damage has taken place.

In case of any improvement having been made to the ship subsequent to the average, or any repairs effected of damages, which have not been sustained in general average, the value of such improvement or repairing, as estimated by surveyors, shall have to be deducted from the value of the ship ascertained by the survey.

**208.** The cargo participates in the payment of general average in the following proportion, i. e.

1. The value of all the goods found on board at the time of the casualty, and which still remain when cargo and ship separate, the said value to be ascertained for undamaged goods as mentioned in Art. 200, and for damaged goods in the manner stipulated by Art. 201;
2. The amount due to any owner of cargo in compensation of goods sacrificed or damaged in general average during the voyage;
3. The amount which the owner of the ship is bound

hos Rederen for Gods, der under Rejsen er tabt eller beskadiget eller solgt til Skibets Behov; jfr. § 149.

209. Fragten bidrager til almindeligt Havari efter Halvdelen af:

1. Den Fragt, som er fortjent ved Rejsens Ende, og
2. Den Erstatning, der godtgøres i Havariberegningen for tabt Fragt.

Er ingen bestemt Fragt betinget, beregnes saadan efter Reglen i § 150.

210. Er Fragtforskuud ydet saaledes at det ikke skal tilbagebetales, hvis paa Grund af Ulykkestilfælde ingen Fragt fortjenes, paahviler det ikke Rederiet at bidrage til almindeligt Havari for sammes Beløb.

211. I de efter Reglerne i §§ 207—210 bestemte bidragspligtige Værdier fradrages saavel Havaribidrag til senere almindeligt Havari paa Rejsen som Omkostninger, der maatte være paaløbne for at frelse eller bevare de bidragspligtige Genstande, og ikke skulle godtgøres som almindeligt Havari.

212. Fritagne for at bidrage til almindeligt Havari ere:

1. Levnetsmidler, Kul og andre Maskinfornödenheder samt Krigsforraad;
2. Skippers og Mandskabs Hyre og
3. Samtlige ombordværende Personers Klæder og Rejsefornödenheder samt hvad de bære hos sig.

Ere imidlertid saadanne Genstande, som henhøre under Nr. 3, opofrede eller beskadigede ved et almindeligt Havari, deltager Ejeren i Tabfordelingen med de Beløb, der godtgøres for dem i Havariberegningen.

hos Rederen for Gods, der under Reisen er tabt eller beskadiget eller solgt til Skibets Behov, jfr. § 149.

209. Fragten bidrager til almindeligt Havari efter Halvdelen af

1. Den Fragt, som er fortjent ved Reisens Ende, og
2. Den Erstatning, der godtgøres i Havariberegningen for tabt Fragt.

Er ingen bestemt Fragt betinget, beregnes den efter Regelen i § 150.

210. Er Fragtforskuud ydet saaledes, at det ikke skal tilbagebetales, hvis paa Grund af Ulykkestilfælde ingen Fragt fortjenes, paahviler det ikke Rederiet at bidrage til almindeligt Havari for sammes Beløb.

211. I de efter Reglerne i §§ 207—210 bestemte bidragspligtige Værdier fradrages saavel Havaribidrag til senere almindeligt Havari paa Reisen som Omkostninger, der maatte være paaløbne for at frelse eller bevare de bidragspligtige Genstande og ikke skal godtgøres som almindeligt Havari.

212. Fritagne for at bidrage til almindeligt Havari er

1. Levnetsmidler, Kul og andre Maskinfornödenheder samt Krigsforraad,
2. Skipsforers og Mandskabs Hyre og
3. Samtlige ombordværende Personers Klæder og Reisefornödenheder, samt hvad de bærer hos sig.

Er imidlertid saadanne Genstande, som henhører under Nr. 3, opofrede eller beskadigede ved et almindeligt Havari, deltager Ejeren i Tabfordelingen med de Beløb, der godtgøres for dem i Havariberegningen.

såsom ersättning för gods, hvilket under resan förlorats eller skadats eller blifvit af befälhafvaren såldt för fartygets behof.

209. Frakten deltagar i gäldande af gemensamt haveri efter halfta beloppet af:

1. Den frakt, som är förtjent när fartyg och last skiljas åt; och
2. Den ersättning, som i gemensamt haveri utgöres för förlorad frakt.

Är ej viss frakt aftalad, vare om dess bestämmande lag, som i 150 § sägs.

210. Är fraktförskott lemnadt utan skyldighet för redaren att det återbära i händelse af olycka, vare redaren ej pliktig att för samma belopp deltaga i gäldande af gemensamt haveri.

211. Vid beräkning af de värden, å hvilka enligt 207 till 210 §§ gemensamt haveri bör fördelas, skall afdrag ske ej mindre för bidrag till senare under resan inträffadt gemensamt haveri, än äfven för de kostnader, hvilka egt rum för att rädda eller bevara de föremål, å hvilka haveriet fördelas och ej äro af beskaffenhet att skola i haveriet ersättas.

212. I gäldande af gemensamt haveri deltaga icke:

1. Proviant, kol och andra för maskinens drift afsedda ämnen samt krigsförråd;
2. Befälhafvarens och besättningens hyra;
3. Ombord varande personers kläder och reseförnödenheter samt hvad de bära på sig.

Har likväl sådant föremål, som under 3 är nämndt, uppförats eller skadats i gemensamt haveri, skall egaren för det honom tillkommande ersättningsbelopp deltaga i haveriets gäldande.

## Danish Text.

owner as compensation for goods lost, damaged or sold for the requirements of the ship, *cfr.* § 149.

**209.** The freight is liable for a share of the said expenses in proportion to one half of:

1. The amount of freight earned on completion of the voyage, and of
2. The amount of the compensation allowed, in the calculation of the average, for freight lost.

If the freight has not been fixed to a certain amount, it is to be calculated according to the rule in § 150.

**210.** If any advance on freight has been made, so that it is not to be paid back, in case no freight is earned on account of accident, the owners of the ship shall not, with respect to the amount so advanced, be bound to contribute to the expenses of general average.

**211.** From the amounts which, according to the regulations of §§ 207—210, shall be contributed to the defraying of expenses occasioned by the average, are to be deducted contributions to any subsequent general average which may have occurred during the voyage, as well as the costs incurred in order to save or keep the property which is liable for a share of the expenses, provided that the said costs are not to be compensated as general average.

**212.** The following items are exempted from contributing to the defraying of expenses caused by general average:

1. Provisions, coals and other requirements for the working of the engines, as well as military supplies;
2. Wages of master and crew;
3. Clothes and travelling effects of all persons on board, and whatever they have about them.

Should, however, any of the effects under clause 3 have been sacrificed or damaged by general average, the owner thereof shall participate in the division of the loss in proportion to the amounts with which the said effects are compensated in the calculation of the average.

## Norwegian Text.

shall receive from the ship-owner for goods which during the course of the voyage have been lost, damaged, or sold for the ship's behoof, as under § 149.

**209.** The freight shall contribute to general average the half part of

1. The freight earned at the termination of the voyage;
2. The compensation allowed in the general average statement for lost freight.

If no certain freight has been stipulated for, it shall be calculated in accordance with the rules of § 150.

**210.** If an advance of freight has been made on the condition that it shall not be repaid if, on account of accidents, no freight shall be due to the ship, the ship-owner shall not be bound to contribute to general average the amount thus advanced.

**211.** From the value of those items which, according to the rules of §§ 207 to 210, have to contribute to general average, there shall be deducted both average contributions to subsequent general average occurring on the voyage and expenses which may have been incurred for the purpose of saving or preserving the items on which contribution is compulsory, and which are not awarded compensation under general average.

**212.** The following items shall be exempt from contribution to general average:

1. Ship's provisions, bunker coals and other requisites for the engines, as well as ship's war material;
2. Wages of master and crew;
3. The clothing and travelling requisites belonging to all persons on board, and that which such persons carry on them.

If however such articles as are mentioned in No. 3, have been sacrificed or damaged through general average, the owners shall participate in the distribution of losses with the amounts awarded for the articles in the average statement.

## Swedish Text.

to pay to the owner of cargo in compensation of goods lost, damaged or sold by the master for the requirements of the ship during the voyage.

**209.** The freight participates in the payment of general average in the following proportion, i. e.

1. One half of the amount of the freight earned when ship and cargo separate;
2. One half of the amount of the compensation payable in general average for lost freight.

If no certain freight has been agreed upon, it shall be determined in pursuance of the rules laid down in Art. 150.

**210.** If an advance of freight has been made, and the owner of the ship is under no obligation to repay it in case of misfortune, the said owner shall not be bound to participate for the amount of the advance in the payment of general average.

**211.** When calculating the value, upon which the general average is to be apportioned in pursuance of Arts. 207—210, deduction shall be made, not only for contribution to any subsequent general average which has taken place during the voyage, but also for any expense incurred to save and preserve the property upon which the general average is to be apportioned, provided the said expense is not recoverable in the average.

**212.** The following items do not participate in the payment of general average:

1. Provisions, coals and other requisites for the working of the engines and ammunition of war;
2. Wages of master and crew;
3. Clothing and travelling effects of persons on board and whatever they have about them.

Should, however, any of the effects under clause 3 have been sacrificed or damaged in general average, the owner thereof shall participate in the payment of the average in proportion to the compensation amount due to him.

213. Beregning og Fordeling af Tabet ved almindeligt Havari sker paa det Sted, hvor Skib og Ladning skilles ad, og efter der gældende Lov.

213. Beregning og Fordeling af Tabet ved almindeligt Havari sker paa det Sted, hvor Skib og Ladning skilles ad, og efter der gældende Lov.

213. Utredning och fördelning af gemensamt haveri skall äga rum å den ort, der fartyg och last skiljas åt eller der dispache för den ort vanligen upprättas, efter der gällande lag.

Havariberegning udføres her i Landet af dertil beskikkede Dispachører. Tvistigheder om en Dispatches Rigtighed afgøres af Domstolene.

Havariberegning udføres her i Landet af dertil beskikkede Dispachører. Tvistigheder om en Dispatches Rigtighed afgøres af Domstolene.

Dispache upprättas här i landet af dertill förordnad tjänsteman (dispachör).

214. Skipperen er pligtig til uden ufornodent Ophold at foranstalte det fornødne for at faa Havarifordelingen udført.

214. Skibsføreren er pligtig til uden ufornodent Ophold at foranstalte det Fornødne for at faa Havarifordelingen udført.

214. Befälhafvaren åligge att utan dröjsmål föranstalta om upprättande af dispache. Vill någon, som eljest eger del i haveriet, påkalla sådan utredning, vare handertill berättigad.

Enhver, hvem Havariet angaar, er pligtig til for sit Vedkommende at meddele alle Oplysninger og Bevisligheder, som Dispachøren anser for nødvendige.

Enhver, hvem Havariet angaar, er pligtig til for sit Vedkommende at meddele alle Oplysninger og Bevisligheder, som Dispachøren anser for nødvendige.

Enhvar, som haveriet rörer, vare skyldig att till dispachören aflemna alla handlingar, hvilka denne för utredningen och fördelningen anser nödiga, och att i öfrigt tillhandagå honom med upplysningar.

Dispachören åligge att, när dispache begäres, så fort ske kan, genom kungörelse, som en

gång införes i allmänna tidningarne samt i tidning inom orten, anmana dem, hvilka i haveriet hafva del, att inom viss förelagd kort tid skriftligen anföra hvad de till bevakande af sin rätt akta nödigt äfvensom ingifva de handlingar, hvilka de vilja åberopa; finnas ingifna handlingar ofullständiga, bör dispachören, så fort ske kan, infordra nödig upplysning af vederbörande. Sedan den i kungörelsen förelagda tid gått till ända eller, der ej å sagda tid fullständiga handlingar inkommit, efter det sådant skett, åligge dispachören att inom två månader, å dag, som genom anslag å stadens rådstufva samt kungörelse i allmänna tidningarne och i tidning inom orten tillkännagifves, hafva dispachen upprättad och tvefaldt utskrifven med derå tecknad underrättelse, inom hvilken tid den missnöjde bör till sin talans bevarande göra målet anhängigt vid domstol; utgifve ock det ena exemplaret till den, som dispachen begärt, och hälle det andra öfrige delegare i haveriet till handa.

ad § 213. Dispachørerne ansættes af Kongen efter forudgaaende Examen, jfr. for Danmark Reskript af 19 Febr. 1817 og Instruktion af 31 Januar 1823, for Norge Lov om Dispachører af 25 Juli 1908 og Reglement for Dispachørerne af 3 Juli 1909; i Sverige har man kun i Stockholm, Göteborg, Helsingfors og Malmö autoriserede Dispachører; en svensk Text for deres Godtgjørelse (svarende til den ovennævnte danske Instruktion af 31 Januar 1823) er fastsat under 19 Januar 1883. I Norge vil deres Godtgjørelse blive Gjenstand for nærmere Bestemmelser af Kongen, jfr. den ovennævnte Lov § 10.

## Danish Text.

213. The adjustment and distribution of the loss incurred through general average, is made at the place where ship and cargo separate, and pursuant to the law of this place.

The adjustment of average in the Kingdom is made by adjusters specially appointed for the purpose (Dispatchorer). Any disagreements as to the correctness of the adjustment of average are settled by the tribunals.

214. The master is bound, without unnecessary delay, to cause the adjustment of the average to be made.

Every person concerned in the average is bound for his part to communicate all information and deliver all documents to the adjuster, which the latter may deem necessary.

## Norwegian Text.

213. The adjustment and distribution of losses caused through general average shall take place at the place where ship and cargo separate, and in conformity with the laws of such place.

In this country the average statement shall be made out by duly appointed average staters. Disputes concerning the correctness of the statement shall be settled by the Court.

214. It shall be incumbent on the master to take, without any unnecessary delay, the requisite steps to have the average adjusted.

It shall be incumbent on every person who is affected by the average to furnish the average stater with all such information and proofs as he may consider necessary.

average is made, as soon as possible, to be inserted in the Official Gazette and in a Local Paper, all persons who participate in the average, to state in writing, within a certain prescribed time, whatever they may prove expedient for the maintenance of their right, and to send in to him any document to which they wish to refer. If any of the documents delivered are found incomplete the average adjuster should, as soon as possible, request the respective party to furnish the necessary information. When the time prescribed in the notice expires, or, if no complete documents have been delivered in by the time appointed, then, when complete delivery has taken place, it shall be the duty of the average adjuster to have the adjustment of the average drawn up in duplicate within two months, and on the day announced by notice, posted up in the Town Court, and by advertisement in the Official Gazette and in one of the Local Papers; the said adjustment to be provided with an endorsement indicating the limit of time within which any person dissatisfied with the adjustment can have the case brought before the Court in order to preserve his right of pleading. Of the two copies one shall be delivered to the person who has requested the adjustment, the other shall be kept by the average adjuster for exhibition to the other persons interested in the average.

## Swedish Text.

213. The adjustment and apportioning of general average shall take place at the port where ship and cargo separate, or where the adjustment of averages are generally made for such port and in pursuance to the law of the place.

Adjustments of averages in this country are made by average adjusters specially appointed for the purpose.

214. It shall be the duty of the master, without any delay, to cause the adjustment of the average to be made. If any person participating in the average wishes to ask for such adjustment, he shall have the right to do so.

Every person concerned in the average shall be obliged to deliver to the average adjuster all documents which the latter may consider necessary for the adjustment and apportioning, and otherwise supply him with information.

It shall be the duty of the average adjuster, whenever a request for an adjustment of average is made, as soon as possible, to summon by notice, to deliver to the average adjuster all documents which the latter may consider necessary for the adjustment and apportioning, and otherwise supply him with information. It shall be the duty of the average adjuster to have the adjustment of the average drawn up in duplicate within two months, and on the day announced by notice, posted up in the Town Court, and by advertisement in the Official Gazette and in one of the Local Papers; the said adjustment to be provided with an endorsement indicating the limit of time within which any person dissatisfied with the adjustment can have the case brought before the Court in order to preserve his right of pleading. Of the two copies one shall be delivered to the person who has requested the adjustment, the other shall be kept by the average adjuster for exhibition to the other persons interested in the average.

To § 213. Average adjusters are appointed by the King after having passed a previous examination; cf. in regard to *Denmark* the Rescript of 19th Feb. 1817 and the Instruction of 31st January 1823, in regard to *Norway* the Act concerning average adjusters of 25th July 1908 and the Regulation concerning examinations of average adjusters of 3rd July 1909; in *Sweden* there are authorized average adjusters only in Stockholm, Gothenburg, Hernösand and Malmö; a Swedish tariff for their remuneration (corresponding to the above-mentioned Danish Instruction of 31st January 1823) was fixed on the 19th January 1883. In *Norway* their remuneration will be subject to further regulations ordained by the King; cf. § 10 of the above-mentioned Act.

215. Dersom Genstande, der i Havarifordelingen ere optagne som tabte ved almindeligt Havari, senere komme til Stede, eller noget af det som almindeligt Havari beregnede Tab senere erstattes af den, der har forvoldt Skaden, bliver den hele Havarifordeling at ændre ved en Tillægsberegning. Derimod maa Havariets Opgørelse ikke udsættes alene af den Grund, at der maatte være Udsigt til at faa opofrede Genstande tilbage eller til at faa Erstatning for Skade.

216. For Havaribidrag hæfter Ejeren af de bidragspligtige Genstande kun med disse, men ikke personlig.

217. Et Skib, hvorpaa Havaribidrag hviler, maa ikke forlade det Sted, hvor Skib og Ladning skilles, og Gods, som hæfter for saadant Bidrag, maa ikke udleveres til Ejeren, forinden Havaribidraget er betalt eller der, for saa vidt som Beløbet endnu ikke er bestemt, er stillet Sikkerhed derfor.

218. Al Skade eller Omkostning for Skib og Gods, som hidrører fra ulykkelig Hændelse paa en Sjøreise, og som ikke henhører under almindeligt Havari eller i Medfør af særlig Forskrift behandles efter de derom givne Regler (jfr. § 161 sidste Stykke), bliver som særligt (partikulært) Havari at bære af den eller de Genstande, som Skaden rammer eller Omkostningen vedkommer.

Ere Omkostninger, der blive at henføre under særligt Havari, anvendte under et for Skib og Ladning eller for flere Dele af Ladningen, fordeles de i billigt Forhold over de Værdier, til hvis Fordel de ere anvendte idet de for Fordeling af almindeligt Havari gældende Regler saa vidt muligt komme til Anvendelse. Omkostninger, der ere anvendte paa at bjerge Ladningen, bæres forholdsvis af denne og af den Fragt, der udredes af det bjergede Gods.

215. Dersom Gjenstande, der i Havarifordelingen er optagne som tabte ved almindeligt Havari, senere kommer til stede, eller noget af det som almindeligt Havari beregnede Tab senere erstattes af den, der har forvoldt Skaden, bliver den hele Havarifordeling at ændre ved en Tillægsberegning. Derimod maa Havariets Opgjørelse ikke udsættes alene af den Grund, at der maatte være Udsigt til at faa opofrede Gjenstande tilbage eller til at faa Erstatning for Skade.

216. For Havaribidrag hæfter Ejeren af de bidragspligtige Gjenstande kun med disse, men ikke personlig.

217. Et Skib, hvorpaa Havaribidrag hviler, maa ikke forlade det Sted, hvor Skib og Ladning skilles, og Gods, som hæfter for saadant Bidrag, maa ikke udleveres til Ejeren, forinden Havaribidraget er betalt, eller der, forsaavidt som Beløbet ikke er bestemt, er stillet Sikkerhed derfor.

218. Al Skade eller Omkostning for Skib og Gods, som hidrører fra ulykkelig Hændelse paa en Sjøreise, og som ikke henhører under almindeligt Havari eller i Medfør af særlig Forskrift behandles efter de derom givne Regler (jfr. § 161, sidste Stykke), bliver som særligt (partikulært) Havari at bære af den eller de Gjenstande, som Skaden rammer eller Omkostningen vedkommer.

Er Omkostninger, der bliver at henføre under særligt Havari anvendte under et for Skib og Ladning eller for flere Dele af Ladningen, fordeles de i billigt Forhold over de Værdier, til hvis Fordel de er anvendte, idet de for Fordeling af almindeligt Havari gjældende Regler saavidt muligt kommer til Anvendelse. Omkostninger, der er anvendte paa at berge Ladningen, bæres forholdsvis af denne og af den Fragt, der udredes af det bergede Gods.

215. Kommer föremål, som i dispache upptagits såsom förloradt i gemensamt haveri, senare till rätta, eller varder skadad, som upptagits till fördelning, senare ersatt af den, hvilken ersättningsskyldighet ålegat, skall dispachen genom tilläggsberäkning därefter rättas. Ej må likväl dispachens upprättande fördröjas allenast af anledning att utsigt må finnas att återfå uppoffradt föremål eller erhålla ersättning för skada.

216. För haveribidrag, som af föremål bör utgå, hafte egaren med samma föremål men svare ej personligen.

217. Fartyg, som häftar för haveribidrag, må ej lemna den ort, der fartyg och last skiljas åt, ej heller gods, som för sådant bidrag häftar, af egaren tagas i besittning förrän bidraget blifvit guldett, eller, der bidraget ännu icke är till beloppet bestämdt, säkerhet därför blifvit stäld.

218. All skada och kostnad, som uppkommer genom olyckshändelse under sjöresa och hvilken ej är att hänföra till gemensamt haveri eller jemlikt 161 § skall fördelas efter enahanda grund, fälle, såsom enskildt haveri, å det föremål, som träffats af skadan eller föranledt kostnaden.

Hafva kostnader, som skola hänföras till enskildt haveri, blifvit gjorda gemensamt för fartyg och last eller viss del af lasten eller ock för delar af lasten, hvilka tillhöra särskilde egare; då skola dessa kostnader efter billighet fördelas å de föremål, till hvilkas nytta de blifvit gjorda, enligt de för gemensamt haveri gifna regler. Kostnad för bergning af last fördelas å dennas värde och den frakt, som för godset utgår.

## Danish Text.

**215.** If any goods, enumerated in the average-adjustment as being lost by general average, are subsequently found, or if any loss entered in the adjustment as general average is later on compensated by the person who has caused the damage, the whole adjustment is to be corrected by means of a supplementary adjustment. On the contrary, the settlement of the adjustment must not be delayed simply on account of there being a chance of recovering any goods sacrificed, or receiving compensation for damage.

**216.** For any average contribution the owner of goods bound to contribute is only responsible with the said goods, but not personally.

**217.** No ship, liable to pay average contribution, may leave the place where ship and cargo separate, nor may goods, liable to pay a similar contribution, be delivered to their owner before the contribution has been paid, or a security deposited in case of the amount of the contribution having not yet been fixed.

**218.** Any damage and expense for ship and cargo caused by any casualty during a voyage, and which does not come under general average, nor, according to any special regulation, is to be dealt with according to the regulations prescribed for general average (cfr. § 161, last portion), shall be borne as special average by the property which has sustained the damage or which should contribute to the defraying of the expenses.

If any expenses which come under particular average have been made conjointly for ship and cargo or for several portions of the cargo, they shall be fairly divided amongst the values for the benefit of which they have been made, as far as possible in accordance with the rules laid down for general average. Expenses incurred in order to save the cargo are borne by the latter and by the freight payable on the goods saved in proportion to their respective value.

## Norwegian Text.

**215.** If articles comprised in the average distribution as having been lost by general average are afterwards recovered, or any of the estimated loss under general average is subsequently made good by the person who has caused the damage, the entire distribution of average shall be amended by a supplementary statement. The settlement of the average distribution must, however, not be deferred solely because a prospect might exist of recovering the articles sacrificed, or of obtaining compensation for damage done.

**216.** The owner of goods on which contribution to average is compulsory shall be liable for contribution to average only to the extent of such goods, and shall not be under any personal liability.

**217.** A ship under liability for an average contribution must not leave the port where ship and cargo separate, and goods liable to such contribution must not be given up to their owners before such average contribution has been paid, or, if the amount has not been fixed, security has been given for it.

**218.** All loss or damage or expenses incurred for a ship and cargo which have arisen from a casualty on a sea voyage, and which do not appertain to general average, or, in conformity with special instructions, are treated in accordance with the regulations made in respect thereto (see last section of § 161), shall as particular average, be borne by the article or articles which sustained the damage, or which the expenses concern.

If the expenses which shall be chargeable to particular average have been incurred for the ship and cargo collectively, or for several portions of the cargo, they shall be divided in reasonable proportions amongst those items for whose benefit they have been applied, the rules in force in respect to general average being employed so far as they may possibly apply. The expenses incurred in saving cargo shall be borne proportionately by it and the freight which shall be paid on the saved goods.

## Swedish Text.

**215.** If any goods mentioned in an average adjustment as lost in general average are subsequently found, or if any damage entered in the adjustment for the purpose of dividing the costs, is later on paid by the person duly bound to compensate, the adjustment shall be corrected by means of a supplementary calculation. The drawing up of the adjustment should, however, not be delayed simply on account of there being a chance of recovering any goods lost, or receiving compensation for damage.

**216.** For any average contribution to be taxed on property, the owner shall only be responsible with the said property but not personally.

**217.** No ship liable to pay average contribution should leave the port where ship and cargo separate, nor should any goods liable to pay similar contribution be taken possession of by their owner, before the contribution has been paid, or a security deposited in case the amount of the contribution has not, by that time, been fixed.

**218.** Every cost and damage caused by any casualty during a voyage, which does not come under general average, nor shall be apportioned on the same principles as for general average, in accordance with Art. 161, shall be borne as particular average by the property which has suffered the damage or incurred the cost.

If any costs which shall be referred to particular average have been incurred jointly for ship and cargo, or any certain portion of the cargo, or for portions of the cargo belonging to different owners, the said costs shall be equitably divided between the properties in favour of which they have been incurred, in accordance with the rules laid down for general average. The cost of salvage of cargo shall be divided between cargo and the freight payable on the goods in proportion to their respective values.

Naar det forlanges af nogen, som er interesseret i saadant Havari, skal dets Beregning og Fordeling foretages af Dis-pacher.

### Ottende Kapitel.

#### Om Skade ved Sammenstød.

219. Hvad der paa Skib skal iagttages til Undgaaelse af Sammenstød, bestemmes ved Regler, som gives af Kongen.

220. Naar Skade paa Skib eller Ladning forarsages ved Sammenstød mellem Skibe, og Skylden ligger paa den ene Side alene, da skal den skyldige erstatte al derved foranlediget Skade.

Er der Skyld paa begge Sider har Retten under Hensyn til Beskaffenheden af de paa hver Side begaaede Fejl at bestemme om og med hvor stort Beløb Erstatning bør gives fra en af Siderne, eller om hvert Skib bør bære sin Skade.

Ved Bedømmelsen af Spørgs-maalet om Skyld skal Retten tage i særlig Betragtning, hvor vidt der var Tid til Overlæg eller ikke.

221. Er Sammenstødet Følge af ulykkelig Hændelse, eller kan det ikke oplyses, at det er forarsaget ved Skyld paa nogen af Siderne, bærer hvert Skib sin Skade.

222. For den Erstatning, som skal tilsvares i Henhold til § 220, hæfter Rederen med Skib og Fragt, for saa vidt Sammenstødet er forarsaget af nogen for hvem han i Medfør af § 8 bærer Ansvar.

223. Naar Skibe støde sammen, paaligger det enhver af Skipperne, saa vidt det kan ske

Naar det forlanges af Nogen, som er interesseret i saadant Havari, skal dets Beregning og Fordeling foretages af en Dis-pacher.

### Ottende Kapitel.

#### Om Skade ved Sammenstød.

219. Hvad der paa Skib skal iagttages til Undgaaelse af Sammenstød, bestemmes ved Regler, som gives af Kongen.

220. Naar Skade paa Skib eller Ladning forarsages ved Sammenstød mellem Skibe, og Skylden ligger paa den ene Side alene, da skal den Skyldige erstatte Skade og Tab, som derved er forvoldt.

Er der Skyld paa begge Sider, har Retten under Hensyn til Beskaffenheden af de paa hver Side begaaede Feil at bestemme, om og med hvor stort Beløb Erstatning bør gives fra en af Siderne, eller om hvert Skib bør bære sin Skade.

Ved Bedømmelsen af Spørgs-maalet om Skyld skal Retten tage i særlig Betragtning, hvor vidt der var Tid til Overlæg eller ikke.

221. Er Sammenstødet Følge af ulykkelig Hændelse, eller kan det ikke oplyses, at det er forarsaget ved Skyld paa nogen af Siderne, bærer hvert Skib sin Skade.

222. For den Erstatning, som skal tilsvares i Henhold til § 220, hæfter Rederen med Skib og Fragt, forsaavidt Sammenstødet er forarsaget af Nogen, for hvem han i Medfør af § 8 bærer Ansvar.

223. Naar Skibe støder sammen, paaligger det enhver af Skibsførerne, saavidt det kan

Der någon, som har del i sådant haveri, det äskar, skall utredning och fördelning af haveriet verkställas af vederbörande dispatchör.

### Åttonde kapitlet.

#### Om skada genom fartygs sammanstötning.

219. Hvad å fartyg bör iakttagas till undvikande af sammanstötning, derom gälle hvad af Konungen förordnas.

220. Stöta fartyg samman med hvarandra, så att deraf uppstår skada å det ena fartyget eller dess last, oeh är sammanstötningen orsakad genom vållande å endera sidan, ersätte den skyldige all skada oeh förlust, som deraf kommer. Är sammanstötningen orsakad genom vållande å båda sidor, ege rätten, med afseende på beskaffenheten af de å hvardera sidan begångna fel, bestämma, om oeh i sådant fall till hvilket belopp ersättningsskyldighet bör endera sidan åläggas, eller om hvardera sidan bör draga sin skada.

Vid bedömande af fråga om vållande till sammanstötning skall rätten taga i särskildt betraktande, huru vida tiden medgaf öfverläggning eller icke.

221. Finnes sammanstötning hafva timat af våda, eller kan det ej utredas, att den orsakats af vållande å endera sidan, draga hvardera sidan sin skada.

222. För den ersättning, som enligt 220 § skall utgå, häfte redaren med fartyg oeh frakt, der sammanstötningen orsakats genom fel eller försummelse, hvarför han jemlikt 8 § är ansvarig.

223. Stöta fartyg samman med hvarandra, åligge enhver af befälhafvarne att, så vidt det

ad § 219. Saml. for Danmark kgl. Anordning af 22 Januar 1897 om Anvendelsen paa danske Skibe af de internationale Søveisregler og Nodsignaler med senere Tillæg af 3 Maj 1899, 17 Dec. 1900 og 23 Februar 1906, Bkg. 20 Dec. 1900 ang. den nye internationale Signalbogs Ikrafttræden og Bkg. 13 Marts 1902 ang. danske Skibes Lanterner samt Lyd-Signalapparater. For Norge kgl. „Plakat“ (d. v. s. Bekjendtgørelse) af 16 Marts 1910 indeholdende Regler til Undgaaelse af Sammenstød af Skibe og om Signaler for Havand. De tilsvarende svenske Regler er givne ved kgl. Förordning af 9 December 1896. Jfr. kgl. förordn. af 26. Oktbr. 1906 og 27. Novbr. 1908 (den sidste om Fartygslanterner).



## Danish Text.

If it is demanded by any-body concerned in such average, the adjustment and distribution of it shall be made by the proper Adjuster.

## Chapter VIII.

## Of damage through collision.

**219.** The rules to be observed on board ships to avoid collision shall be settled by Royal decree.

**220.** Whenever damage is done to ship or cargo through collision between ships, and only one of these is in fault, this one shall make good all the damage occasioned.

If both parties are in fault the Court shall decide, taking the fault committed on each side into consideration, whether and to what amount compensation shall be given by either party, or if each party shall bear its own loss.

In deciding the question as to which party has been in fault, the Court shall take into special consideration whether or not there has been any time for deliberation.

**221.** If a collision was caused by accident, or it cannot be proved that it was due to any fault committed by either party, each ship shall bear its own loss.

**222.** For the compensation which is to be paid in pursuance of § 220, the ship-owner is liable with the ship and freight, should the collision have been brought on by any person for whom he is answerable in accordance with § 8.

**223.** If vessels collide, it shall be the duty of the respective shipmasters, as far

## Norwegian Text.

When demanded by any person having an interest in such average, its calculation and distribution shall be undertaken by an average stater.

## Chapter VIII.

## Damage by Collision.

**219.** The King shall issue regulations as to the rules to be observed on board ships for the prevention of collisions.

**220.** When any ship or cargo has sustained damage by collision between ships, and the blame is exclusively on the one side, the guilty party shall make good the whole loss caused by the collision.

If both sides are to blame, the Court shall decide after due consideration of the nature of the faults committed on both sides, whether compensation ought to be paid by one of the parties, and the amount thereof, or if each ship ought to bear its own loss.

In deciding the question of blame the Court shall particularly take into consideration whether there was time left for deliberation or not.

**221.** If the collision has been the result of accident, or if it cannot be proved that it has been occasioned by the fault of one side or the other, each ship shall bear its own loss.

**222.** For the compensation which shall be given in accordance with § 220, the owners shall be liable to the extent of the ship and the freight, provided the collision has been caused by any person for whom, by virtue of § 8, they are responsible.

**223.** When a collision takes place between ships, it shall be incumbent on the master

## Swedish Text.

If any person participating in such average should so require, the adjustment and apportioning of the average shall be made by the proper average adjuster.

## Chapter VIII.

## Regarding damage caused by collision.

**219.** The rules to be observed on board ships to avoid collision are laid down by Royal Decree.

**220.** If ships collide, and the one ship or her cargo is damaged, and the collision is caused by any act of either party, the one in fault shall be bound to make good all damage and loss thereby sustained.

If the collision is caused by fault or neglect on both sides, the Court shall decide, taking the fault committed on each side into consideration, if and to what amount either party shall be adjudged to pay compensation, or if each party should bear its own loss.

When deciding the question as to which party caused the collision, the Court shall specially enquire whether there had been any time for deliberation.

**221.** Should a collision be proved to have occurred by accident, or should it be impossible to decide that the collision had been due to any fault committed by either party, each shall bear its own loss.

**222.** The owner shall, with ship and freight, be responsible for any compensation which shall have to be paid in pursuance of Art. 220, should the collision have been caused by any fault or neglect for which he is responsible in accordance with Art. 8.

**223.** If vessels collide, it shall be the duty of the respective shipmasters not only to

*To § 219.* Cf. in regard to *Denmark* the Royal Ordinance of 22nd January 1897 concerning the application on Danish vessels of the international maritime regulations and signals in case of need, with subsequent Supplements of 3rd May 1899, 17th Dec. 1900 and 23rd February 1906, the Publication of 20th Dec. 1900 concerning the coming into force of the new international signal book, and the Publication of 13th March 1902 concerning the lights and sound signals used on Danish vessels. In regard to *Norway* cf. the Royal "Placard" (i. e. Publication) of 16th March 1910 containing rules concerning the avoidance of collisions of vessels and concerning signals at sea in case of need. The corresponding *Swedish* rules were given by the Royal Ordinance of 9th December 1896. Cf. the Royal Ordinances of 26th Oct. 1906 and 27th Nov. 1908 (the latter dealing with lanterns of vessels).

uden Fare for eget Skib, dets Besætning og Passagerer, at yde det andet Skib og dets Besætning og Passagerer al Hjælp, som er mulig og fornøden til Frelse fra den ved Sammenstødet opstaaende Fare, saa og for sammes Skipper at opgive sit eget Skibs Navn og Hjemsted, saavel som Sted eller Havn, hvorfra det kommer, og hvortil det er bestemt.

Den Skipper, som uden gyldig Grund undlader at efterkomme disse Forskrifter, anses at være Skyld i Sammenstødet, medmindre andet bevises.

### Niende Kapitel. Om Bjergeløn.

224. Enhver, som bjerger Skib, der er forulykket eller stedt i Nød, eller dets Ladning eller noget, som har hørt til saadant Skib eller dets Ladning, saa og enhver, som medvirker ved Bjergningen, har Ret til at faa Bjergeløn af, hvad der bjergeres. Kunne Parterne ikke enes om Bjergelønnens Størrelse, bliver denne at bestemme af Retten.

Hvad Bjergere i øvrigt have at iagttage, navnlig naar Ejer eller Fuldmægtig for ham ikke er til Stede, bestemmes i særlig Strandsingslov.

225. Ved Bestemmelse af Bjergeløn bør i Særdeleshed tages i Betragtning:

1. Den Fare, hvorfor det bjergede var udsat; om Skibet var forladt af sin Besætning; om denne har medvirket til Bjergningen, eller om Bjergningen i øvrigt er bleven

ske uden Fare for eget Skib, dets Besætning og Passagerer, at yde det andet Skib og dets Besætning og Passagerer al Hjælp, som er mulig og fornøden til Frelse fra den ved Sammenstødet opstaaende Fare, ligeledes for den anden Skibsfører at opgive sit eget Skibs Navn og Hjemsted saavel som det Sted eller den Havn, hvorfra det kommer, og hvortil det er bestemt. Samme Forpligtelse paahviler Skibsføreren, naar hans Skib stoder sammen med Baad.

Den Skibsfører, som uden gyldig Grund undlader at efterkomme disse Forskrifter, anses for at være Skyld i Sammenstødet, medmindre Andet bevises.

### Niende Kapitel. Om Bergeløn.

224. Enhver, som berger Skib, der er forulykket eller stedt i Nød, eller dets Ladning eller Noget, som har hørt til saadant Skib eller dets Ladning saavel som Enhver, som medvirker ved Bergningen, har Ret til at faa Bergeløn af, hvad der berges. Kan Parterne ikke enes om Bergelønnens Størrelse, bliver denne at bestemme af Retten, medmindre det Bergedes Værdi ikke overstiger 500 Kr., i hvilket Tilfælde den bestemmes af Amtmanden.

Om Behandlingen af berget eller indstrandet Gods saavel som om, hvad Bergere iøvrigt har at iagttage, navnlig naar Eier eller Fuldmægtig for ham ikke er tilstede, gives Forskrifter ved særlig Lov.

225. Ved Bestemmelse af Bergeløn bør i Særdeleshed tages i Betragtning:

1. Den Fare, hvorfor det Bergede var udsat; om Skibet var forladt af sin Besætning; om denne har medvirket til Bergningen, eller om Bergningen iøvrigt er bleven

kan ske utan fara för eget fartyg samt besättningen och passagerarne derå, ej mindre lemna det andra fartyget, dess besättning och passagerare all hjälp, som är möjlig och behöflig för räddning ur den genom sammanstötningen uppkomna faran, än äfven för dettas befälhafvare uppgifva namnet å sitt eget fartyg, dess hemort samt den ort eller hamn, hvarifrån det kommer, och den, dit det skall gå.

### Nionde kapitlet. Om bergarelön.

224. Hvar som bergar för olyckadt eller nödstäldt fartyg eller dess last eller något, som hört till sådant fartyg eller dess last, så ock enhvar, som vid bergningen medverkar, ege af det, som bergats, undfå bergarelön. Kunna parterna icke enas om bergarelönens storlek, skall denna bestämmas af domstol.

225. Vid bestämmande af bergarelönens belopp har rätten att i synnerhet fästa afseende å följande omständigheter:

1. Om det bergade var utsatt för synnerlig fara, om fartyget var öfvergifvet af besättningen, om besättningen biträdt vid bergningen, eller om denna eljest underlättats

ad § 224 D. Jfr. Strandsingsloven af 10 April 1895 med kgl. Anordning af 1 Juli 1895 og Tillægslov af 30 April 1909.

N. Jfr. Lov om Stranding og Vrag af 20 Juli 1893. Det er i Norge afgjort ved Høiesteretsdom, at Bjergeløn ogsaa bliver at udrede (af det bjergede Skibs Assurandør) i det Tilfælde, at det bjergende og det bjergede Skib tilhører den samme Reder.

## Danish Text.

as it can be done without danger to his own ship, its crew and passengers, to render the other ship, its crew and passengers, all possible and necessary assistance for their rescue from the danger arising from the collision, and also to give to the master of the other ship the name and port of registry of his own ship, as well as the place or port whence it comes and for which it is bound.

The master who without valid reason omits to observe these instructions, is considered to have been the cause of the collision, unless the contrary is proved.

### Chapter IX. Of salvage.

**224.** Anybody who saves a wrecked or distressed ship, or its cargo, or anything which has belonged to any such ship or its cargo, as well as any person who assists in such salvage, has a right to receive a salvage compensation out of the saved property. If the parties do not agree as to the amount of the said compensation, this is to be fixed by the Court.

It shall be determined by a special Law what the salvors further have to observe, especially in case the owner or his agent are not present.

**225.** At the settling of the amount of the salvage, the following circumstances should specially be taken into consideration:

1. The danger to which the property saved was exposed; the fact whether the ship was abandoned by its crew or not; the fact whether the latter assisted in the

## Norwegian Text.

of each ship, provided he can do so without danger to his own ship, its crew and passengers, to render the other ship, its crew and passengers, such assistance as may be possible and necessary in order to succour them from the danger resulting from the collision, and also to give the master of the other ship the name of his own ship, and of the port to which it belongs, and of the place, or the port, from which, or to which, it is bound. The same duty shall be incumbent on the master when his ship collides with a boat.

Every master who, without sufficient reason, omits to comply with these rules, shall be considered guilty of having occasioned the collision, provided he cannot adduce proof to the contrary.

### Chapter IX. Salvage.

**224.** Whoever saves a ship wrecked, or in distress, or its cargo, or other things belonging to such ship, or its cargo, and any person rendering assistance at the rescue, shall be entitled to salvage on the property saved. If the parties do not agree as to the amount of the salvage, the matter shall be left to the decision of the Court, unless the value of the saved property does not exceed 500 Kroner, in which case the Amtmand shall decide it.

Instructions will be issued in a special Law as to the treatment of goods saved or washed ashore, and the rules to be otherwise observed by salvors, particularly when the owner, or his representative, is not present.

**225.** In fixing the amount of the salvage the following circumstances ought, particularly, to be taken into consideration: that is to say

1. The danger to which the saved property has been exposed; whether the ship was abandoned by its crew; whether the crew have assisted in the rescue, or if the

## Swedish Text.

render to the other ship, her crew and passengers, all possible and needful assistance for the rescuing from the danger caused by the collision, as far as he can do so without danger to his own ship, crew and passengers, but also to give to the master of the other ship, the name of his ship, the port to which she belongs, and the place or port whence she arrives or to which she is bound.

### Chapter IX. Salvage compensation.

**224.** Any person saving any wrecked or distressed ship or her cargo, or anything which has belonged to any such ship or her cargo, as well as everyone assisting in any such salvage, shall have the right to receive salvage compensation out of the saved property. If the parties cannot agree as to the amount of the salvage compensation, the Court shall decide.

**225.** When deciding the amount of the salvage compensation, the particular attention of the Court shall be given to the following circumstances, i.e.

1. If the property saved had been exposed to imminent danger; if the ship was abandoned by the crew; if the crew assisted in the salvage, or if the salvage

To § 224 D. Cf. the Act on Stranding of 10th April 1895, with the Royal Ordinance of 1st July 1895, and the supplementary Act of 30th April 1909.

N. Cf. the Act on Stranding and Wreckage of 20th July 1893. It has in Norway been decided by a judgment rendered by the Supreme Court that salvage shall also be paid (by the insurer of the ship saved) in the case where the salvaging ship and the ship saved belong to the same shipowner.

lettet ved egne Hjelpe-  
midler;

2. Den Fare, hvorfor Bjergerne eller deres Ejendele have været udsatte, og den Skade, de have lidt paa Helbred eller Gods;
3. Den Kyndighed og Dygtighed, hvormed Bjergernes Arbejde har været udført, og den Tid og Anstrengelse, det har kostet;
4. Bjergernes Antal, deres hafte Udgifter og Værdien af de anvendte Redskaber;

#### 5. Det bjergedes Værdi.

**226.** Bjergeløn maa i Almindelighed ikke sættes højere end til en Tredjedel af det bjergedes Værdi efter Fradrag af Told og andre offentlige Afgifter samt Omkostninger ved dets Bevaring, Vurdering og Salg. Er Værdien ringe, eller har Bjergningen været forbunden med stor Fare eller ualmindelige Anstrengelser, kan dog Bjergelønnen sættes højere.

Bjergelønnen indbefatter tilige Godtgørelse for at bringe det bjergede i Sikkerhed og for den dertil gjorte Brug af Fartøjer eller andre Redskaber.

**227.** Er der, medens Nød stod paa, af Skipper, Reder eller Ladningsejer indgaaet Overenskomst om Bjergeløn, kan dog den, som skal betale samme, inden to Maaneder efter Overenskomstens Afslutning, bringe Spørgsmaalet om Bjergelønnens Størrelse for Retten, som kan nedsætte den betingede Godtgørelse, naar denne betydelig overstiger, hvad der skønnes at være passende. Gaar Overenskomsten ud paa, at Bjergeløn skal fastsættes ved Voldgift eller paa anden lignende Maade, er den ikke bindende for den, som skal betale Bjergelønnen, naar han inden 14 Dage efter Overenskomstens Afslutning opsiges denne.

lettet ved egne Hjelpe-  
midler;

2. Den Fare, hvorfor Bergerne eller deres Eiendele har været udsatte, og den Skade, de har lidt paa Helbred eller Gods;
3. Den Kyndighed og Dygtighed, hvormed Bergernes Arbejde har været udført, og den Tid og Anstrengelse, det har kostet;
4. Bergernes Antal, deres havte Udgifter og Værdien af de anvendte Redskaber;

#### 5. Det Bergedes Værdi.

**226.** Bergeløn maa i Almindelighed ikke sættes højere end til en Tredjedel af det Bergedes Værdi efter Fradrag af Told og andre offentlige Afgifter samt Omkostninger ved dets Bevaring, Vurdering og Salg. Er Værdien ringe, eller har Bergningen været forbunden med stor Fare eller ualmindelige Anstrengelser, kan dog Bergelønnen sættes højere.

Bergelønnen indbefatter tilige Godtgørelse for at bringe det Bergede i Sikkerhed og for den dertil gjorte Brug af Fartøier eller andre Redskaber.

**227.** Er der, medens Nød stod paa, af Skibsfører, Reder eller Ladningsejer indgaaet Overenskomst om Bergeløn, kan dog den, som skal betale samme, inden 14 Dage, efterat det Bergede er bragt i Havn, bringe Spørgsmaalet om Bergelønnens Størrelse for Retten, som kan nedsætte den betingede Godtgørelse, naar denne betydelig overstiger, hvad der skønnes at være passende. Gaar Overenskomsten ud paa, at Bergeløn skal fastsættes ved Voldgift eller paa anden lignende Maade, er den ikke bindende for den, som skal betale Bergelønnen, naar han inden 14 Dage efter Overenskomstens Afslutning opsiges denne.

genom användande af far-  
tygets egna hjälpmedel;

2. Den fara, för hvilken bergarne eller deras redskap varit utsatta, och den skada, bergarne må hafva lidit till lif, helsa eller gods;
3. Den insigt och drift, hvarmed bergningsarbetet utförts, samt den tid och möda som dertill användts;
4. Antalet af det manskap, som biträdt vid bergningen, värdet af dervid använda redskap och de utgifter, bergarne sjelfva för bergningens utförande må hafva fått vidkännas; och
5. Det bergades värde.

**226.** Bergarelön må i allmänhet icke sättas högre, än till en tredjedel af det bergades värde, sedan derifrån afdragits tull och öfriga afgifter, som böra af det bergade utgå, afvensom kostnad för dettas förvarande, värdering och försäljning; är det bergade af ringa värde, eller var bergningen förknad med särdeles stor möda eller fara, må bergarelönnen dock sättas till högre belopp.

Under bergarelön innefattas jemväl godtgørelse för det bergades förande i säkerhet och användande för sådant ändamål af farkoster eller annan redskap.

**227.** Har befälhafvare, redare eller lastegare, medan nöden ännu varade, med bergarne öfverenskommit om viss bergarelön, ege ändock den, som skall utgifva bergarelönnen, att, der det betingade beloppet betydligt öfverstiger hvad skäligt är, vid domstol deri erhålla jemkning; instämme dock, der bergarelönnen jemväl guldits, medan nöden ännu varade, klander inom sex månader, efter det betalning erlades, eller hafve förlorat sin talan. Innefattade öfverenskommelsen, att bergarelönnens belopp skulle bestämmas af skiljemän eller på annat dylikt sätt, vare det aftal ej bindande för den, som skall utgifva bergarelönnen, der han inom fjorton dagar efter det öfverenskommelsen slöts

## Danish Text.

salvage or not, and whether the salvage was otherwise rendered easier by employing the ship's own resources;

2. The danger to which the salvors or their property have been exposed, and the injury which they have suffered to health or property;
3. The skill and energy with which the salvage was performed, the time employed and the efforts made;
4. The number of the salvors, their expenses and the value of the gear used;

5. The value of the property saved.

**226.** The salvage must, as a rule, not be rated to more than one third of the value of the property saved after deduction of customs and other Government dues, as well as of any costs for its preservation, valuation and sale. If, however, this property is of little value, or if the salvage was attended with great danger or extraordinary trouble, the compensation may be fixed at a higher amount.

Compensation for bringing the saved goods into safety and for the use of boats and gear for such purpose, is also to be included in the salvage.

**227.** If the master, shipowner or owner of the cargo, while the distress lasted, have made any agreement with regard to the salvage, the person who is to pay this compensation shall, nevertheless, have the right, within two months after this agreement having been made, to bring the question as to the amount of the salvage before the Court, who can reduce the compensation agreed on, if the latter considerably exceeds what is thought reasonable. Should the agreement stipulate that the salvage shall be fixed by arbitration, or in any other similar manner, such agreement is not binding on the person who is to pay the salvage, provided he renounces the agreement within a fort-

## Norwegian Text.

rescue has, moreover, been facilitated by the ship's own resources;

2. The risk or danger to which the salvors or their property has been exposed, and the damage their health or property may have suffered;
3. The skill and ability exhibited by the salvors in the performance of the work, and the time and labor it has cost;
4. The number of the salvors, the expenses incurred by them, and the value of the gear employed;

5. The value of the property saved.

**226.** The amount of salvage must, as a rule, not be fixed higher than one third of the value of the saved goods after deduction of customs duty and other public charges, and the expenses connected with the safe keeping, valuation and sale of the goods. If the goods are of little value, or if the salvage has been attended with great danger, or extraordinary exertions, a greater amount may be awarded.

The salvage shall also include compensation for conveying the goods into safety, and for the use of vessels or other gear employed for such purpose.

**227.** If the master, or the owner of the ship or its cargo, while in distress, has entered into an agreement respecting salvage, the person by whom the salvage shall be paid shall be entitled, within fourteen days after the saved property has been brought into port, to have the amount of the salvage decided by the Court, which may reduce the salvage agreed upon if it greatly exceeds the amount deemed to be a fair compensation. If, according to the agreement, the salvage should be fixed by arbitrators or in some other similar manner, this shall not be binding on the party by whom it is payable, if, within 14 days after the conclusion of the agreement, he notifies

## Swedish Text.

was otherwise rendered easier by employing the vessel's own resources;

2. The danger to which the salvors and their material were exposed, and the damage which the salvors may have suffered to life, health or property;
3. The skill and energy by which the salvage was carried out, and the time and work expended;
4. The number of men assisting in the salvage, the value of the material used, and the expense incurred by the salvors themselves in the salvage operations;

5. The value of the property saved.

**226.** The salvage compensation should generally not be taxed higher than one third of the value of the property saved, after deduction of custom dues and other expenses chargeable on the property, as well as any cost for the preservation, valuation and sale of the said property. If the saved property is of small value, or if very considerable trouble or danger was incurred with the salvage, the compensation may, however, be fixed at a higher amount.

Compensation for bringing the saved property into safety, and for the use of boats or other material for such purpose, is also to be included in the salvage compensation.

**227.** If any master, shipowner, or owner of cargo, during the continuance of the distress, have agreed with the salvors to pay a certain salvage compensation, the person or persons liable to pay such salvage compensation shall, nevertheless, have the right to obtain a reduction at the Court, in case the amount agreed upon considerably exceeds what is just and reasonable. In case the salvage compensation has also been paid during the continuance of the distress, complaints should, however, be lodged within six months from the date of payment, or the party paying shall lose his right to bring suit. If the agreement stipulates that the salvage compensation shall

228. Tviste Bjergere indbyrdes om Bjergelønnens Fordeling, bestemmes denne af Retten under Hensyn til de i § 225 angivne Omstændigheder, medmindre Flertallet af Bjergerne er enigt om at lade Sagen afgøre af Amtmanden efter indhentet Erklæring af Politimesteren, med Forbehold af at kunne indanke Sagen for Justitsministeriet.

Har et Skib paa Rejsen bjerget noget, bliver af Bjergelønnen først at godtgøre den Skade, som Bjergningen maatte have medført for Skib eller Ladning; derefter faar Rederiet to Tredjedele, hvis det bjergende Skib er Dampskib, men Halvdelen, hvis det er Sejlskib, og Resten deles lige mellem Skipper og Mandskab; dettes Part fordeles i Forhold til enhver Løn. Overenskomst, hvorefter Skipper eller Mandskab skulde nøjes med mindre Andel end her nævnt, er uden Gyldighed, medmindre Skibet er særlig udrustet for Bjergning, eller Overenskomsten gælder Udførelsen af et bestemt Bjergningsforetagende.

229. Bjergere have Ret til at modsætte sig, at bjerget Skib forlader Stedet, eller bjerget Gods bortføres, saa længe de ikke ere fyldstgjorte for Bjergelønnen, eller Sikkerhed er stillet for samme.

228. Tvister Bergere indbyrdes om Bergelønnens Fordeling, bestemmes denne af Retten eller, hvis det Bergedes Værdi ikke overstiger 500 Kroner, af Amtmanden under Hensyn til de i § 225 angivne Omstændigheder.

Har et Skib paa Reisen bjerget Noget, bliver af Bergelønnen først at godtgjøre den Skade som Bergningen maatte have medført for Skib eller Ladning; derefter faar Rederiet to Tredjedele, hvis det bjergende Skib er Dampskib, men Halvdelen, hvis det er Sejlskib, og Resten deles lige mellem Skibsfører og Mandskab; dettes Part fordeles i Forhold til Enhvers Løn. Overenskomst, hvorefter Skibsfører eller Mandskab skal nøjes med mindre Andel end her nævnt, er uden Gyldighed, medmindre Skibet er særlig udrustet for Bergning, eller Overenskomsten gjælder Udførelsen af et bestemt Bergningsforetagende.

229. Bergere har Ret til at modsætte sig, at berget Skib forlader Stedet, eller berget Gods bortføres, saalænge der ikke er gjort dem Fyldest for Bergelønnen, eller Sikkerhed er stillet for samme.

Søgsmaal til Fastsættelse af Bergeløn eller dennes Fordeling kan anlægges paa det Sted, hvor Bergningen er foretaget, eller hvorhen det Bergede er indbragt.

hos bergarne uppsäger aftalet. (*Lag af 25 Mai 1894.*)

228. Tvista bergare inbördes om bergarelönens fördelning, bestämmes denna af rätten med ledning af de i 225 § angifna omständigheter.

Har fartyg under resa något bergat, skall af bergarelönnen, sedan deraf först godtgjorts den skada, som genom bergningen må hafva tillfogats fartyg eller last, redaren erhålla två tredjedelar, om fartyget är ångfartyg, men eljest hälften, samt återstoden lika fördelas mellan befälhafvaren och besättningen; hvad besättningen tillfallers skall fördelas i förhållande till den aflöning, enhvar åtnjuter. Aftal derom att af bergarelön, som kan med fartyg förtjenas, ringare andel, än nu är sagdt, skall tillfalla befälhafvaren eller besättningen vare ogildt, der ej fartyget är särskildt utrustadt för bergningsarbete eller aftalet angår utförande af visst bergningsföretag.

229. Utan bergarnes medgifvande må icke, innan bergarelönnen guldits eller säkerhet därför blifvit stäld, bergadt fartyg lemna det ställe, dit det efter bergningen förts, eller bergadt gods af egaren tagas i besittning.

## Danish Text.

night after its having been concluded.

## Norwegian Text.

his intention to withdraw from the agreement.

## Swedish Text.

be decided by arbitration or in any other similar manner, such stipulation shall not be binding upon the person who has to pay the salvage compensation, provided he within a fortnight from the conclusion of the agreement gives to the salvors notice of discontinuance of the same. (*Law of the 25th of May, 1894.*)

228. Should the salvors dispute among themselves regarding the division of the salvage, this is settled by the Court, which shall take into consideration the circumstances mentioned in §225, unless the majority of the salvors agree on allowing the matter to be decided by the chief magistrate (Amtmanden) after having heard the chief of the police of the place, reserving the right to appeal to the Minister of Justice.

If a ship has saved anything during a voyage, the damage done to ship or cargo by the salvage is first to be made good from the salvage; then the ship-owners receive two thirds if the saving ship is a steamer, but one half if it is a sailing vessel; the remainder shall be divided equally between the master and the crew; the portion due to the latter shall be divided in proportion to their respective wages. Agreements according to which the master or the crew should content themselves with less than mentioned above, shall be null and void, unless the ship is specially equipped for salvage operations, or the agreement refers to the carrying out of a special salvage enterprise.

229. The salvors have the right to oppose against a saved ship leaving the place, or saved goods being carried away, as long as they have not received the salvage due to them or security has been deposited.

228. If any dispute arises amongst the salvors themselves respecting the distribution of the salvage money, it shall be decided by the Court, or if the value of the saved property does not exceed 500 Kroner, by the Amtmand, under due regard of the circumstances referred to in § 225.

If anything has been rescued by a ship during the voyage, all loss and damage sustained by the ship or cargo in effecting the rescue shall, in the first place, be made good out of the salvage money, upon which two thirds of the amount, if the ship is a steam ship, but otherwise one half thereof, shall be apportioned to the owners of the ship, and the remainder divided equally between the master and the crew, the shares falling to the seamen to be divided in proportion to the wages of each man. Any agreement made to the effect that the master or the crew consent to receiving smaller shares than aforesaid shall be void, unless the ship has been specially equipped for salvage purposes, or the agreement relates to the carrying out of certain appointed salvage operations.

229. The salvors shall be entitled to prohibit a rescued vessel from leaving the place, or saved goods from being removed, until their claims for salvage have been satisfied or security given for the payment thereof.

Proceedings in Court for the fixing or apportionment of the amount of salvage may be taken either at the place where the salvage occurred, or at that to which the saved goods have been brought in.

228. If the salvors dispute between themselves regarding the division of the salvage compensation, the Court shall decide, taking the circumstances mentioned in Art. 225 into consideration.

If a ship saves anything during a voyage, the owners shall receive two thirds of the salvage compensation, if the ship is a steamer, otherwise one half, the damage done to ship or cargo in the salvage having, however, first been paid from the said compensation, whereupon the remainder shall be divided equally between the master and the crew; the portion due to the crew shall be divided in proportion to their respective wages. Agreements stipulating a smaller portion to master or crew of the salvage compensation that may be earned by a ship, than mentioned above, shall be null and void, unless the ship is specially equipped for salvage operations or the agreement refers to the carrying out of any special salvage enterprise.

229. No ship saved shall leave the place to which it has been brought subsequent to the salvage, nor any saved cargo be taken possession of by its owner, before the salvage compensation has been paid or security deposited, except with the consent of the salvors.

## Tiende Kapitel.

## Om Søforsikring.

## Første Afsnit.

## Almindelige Bestemmelser.

230. Genstand for Forsikring er enhver lovlig Interesse, som lader sig ansætte i Penge, og som er afhængig af, at Skib eller Ladning, der udsættes for Fare paa Søen, ikke fortabes eller forringes som Følge af saaden Fare.

Navnlig kunne forsikres: Skib, Fragt, Skibets Udrustning, Ladning, forventet Handelsfordel og Provision paa Varer, Bodmerifordringer, Havaripenge og andre Fordringer, som skulle dækkes af Skib, Fragt eller Ladning. Forsikreren kan genforsikre den af ham overtagne Risiko (Reassurance.)

231. Forsikring kan tages for egen eller for en andens Regning eller uden Angivelse af, om Forsikringen er tegnet for egen eller andens Regning („for vedkommendes Regning“ eller lignende).

Tages Forsikring for en andens Regning uden Ordre, har den, der slutter Forsikringen, udtrykkelig at opgive denne Omstændighed. Undlades dette, er Forsikringen ugyldig, selv om den senere godkendes af den, for hvis Regning den er begæret, og Forsikreren har ikke desto mindre Krav paa Forsikringspræmien.

## Tiende Kapitel.

## Om Sjøforsikring.

## Første Afsnit.

## Almindelige Bestemmelser.

230. Gjenstand for Forsikring er enhver lovlig Interesse, som lader sig ansætte i Penge, og som er afhængig af, at Skib eller Ladning, der udsættes for Fare paa Sjøen, ikke fortabes eller forringes som Følge af saadant Fare.

Navnlig kan forsikres: Skib, Fragt, Skibets Udrustning, Ladning, forventet Handelsfordel og Provision paa Vare, Bodmerifordringer, Havaripenge og andre Fordringer, som skal dækkes af Skib, Fragt eller Ladning. Forsikreren kan genforsikre den af ham overtagne Risiko (Reassurance.)

231. Forsikring kan tages for egen eller for en Andens Regning eller uden Angivelse af, om Forsikringen er tegnet for egen eller for Andens Regning („for Vedkommendes Regning“ eller lignende).

Tages Forsikring for en Andens Regning uden Ordre, har den, der slutter Forsikringen, udtrykkelig at opgive denne Omstændighed. Undlades dette, er Forsikringen ugyldig, selv om den senere godkjendes af den, for hvis Regning den er begæret, og Forsikreren har ikke desto mindre Krav paa Forsikringspræmien.

## Tionde kapitlet.

## Om sjöförsäkring.

## I.

## Allmänna bestämmelser.

230. Föremål för försäkring är hvarje lagligt intresse, som kan uppskattas i penningar och som är beroende deraf att fartyg eller last, som utsättes för fara på sjön, icke förloras eller i värde minskas till följd af sådant fara.

I synnerhet kunna följande föremål försäkras: fartyg, frakt, fartygs utrustning, last, förmodad vinst och provision å varor, bodmerifordran, medel, förskjutna eller upplånta för haveri, så ock andra fordringar, som skola gäldas ur fartyg, frakt eller last. Försäkringsgivare ege sjelf försäkra det föremål, han åt annan försäkrat, för den fara, han öfvertagit (återförsäkring).

231. Försäkring kan tagas för egen eller för annans räkning eller ock utan tillkännagivande, huru vida den tages för egen eller för annans räkning („för vederbörandes räkning“ eller dylikt).

Tages försäkring för annans räkning utan uppdrag, skall den, som tager försäkringen, för försäkringsgivaren uttryckligen uppgifva denna omständighet; underlåter han det, vare försäkringen ogild och premien förverkad, ändå att den, för hvars räkning försäkringen tagits, densamma derefter godkänner.

*ad Kap. 10.* Ifølge Levenes Motiver har man ved Fastsættelse af Søforsikringsretten haft til Hensigt at indskrænke sig til dennes almindelige Grundsætninger, medens Omsorgen for at fastsætte Enkelthederne skulde være overladt de private Søforsikringsbetingelser. Bestemmelserne i det 10de Kap. er derfor heller ikke præceptoriske, men viger for de private, saavel almindelige som særlige Forsikringsaftaler. Disse private almindelige Søforsikringsbetingelser indeholdes i Danmark i den af Kongen stadfæstede Konvention af 2 April 1850 for det kgl. oktroierede Søassurance-Kompagni i Kjøbenhavn, idet dennes Regler og Betingelser i det væsentlige befulgtes af alle Forsikrere i Danmark. En paabegyndt Revision af Konventionen, med det Formaal at bringe den i Overensstemmelse med Søloven, er for nærværende endnu ikke tilendebragt. De tilsvarende almindelige Betingelser af denne Slags i Norge findes i: Revideret norsk Søforsikringsplan af Sept. 1894, som tjener til Udfyldelse af Leven, til hvilken den forøvrigt slutter sig mest mulig. Planen har senere været undergivet flere Revisioner, den sidste af 1907. For Sverige indeholdes de private Søforsikringsbetingelser i den almindelige svenske Søforsikringsplan, som ogsaa slutter sig nær til Leven.



Danish Text.

Norwegian Text.

Swedish Text.

Chapter X.  
Of marine insurance.

1.

## General Rules.

**230.** Every legal interest, convertible into money and dependent on the preservation and maintenance of ship or cargo, exposed to the perils of the sea, can be made the object of insurance.

In particular the following are objects of insurance: Ship, freight, equipment of ship, cargo, expected profit and commission on merchandise, bottomry-claims, claims for the sake of average, as well as any other debt which is to be met by ship, freight or cargo. Underwriters shall have the right to re-insure the risk they have assumed (Re-insurance).

**231.** An insurance may be effected either on one's own account, or on behalf of some other person, or without any statement as to whether the insurance is effected for one's own account or for some one else ("for the party concerned", or the like).

If an insurance is effected on behalf of another person, without authority from the latter, the person applying for insurance shall expressly state such fact. Should he omit to do so, the insurance shall be null and void, even if the person on whose account the insurance has been taken subsequently approves thereof, and the underwriter has, nevertheless, the right to claim the premium of insurance.

Chapter X.  
Marine Insurance.

First part.

## General Regulations.

**230.** As subject-matter for insurance is every lawful interest which has a monetary value, which value is dependent upon the fact of a ship or cargo, when exposed to risk at sea, not being lost or damaged in consequence of such risk.

Insurance may be specially effected upon a ship, freight, equipment of the ship, cargo, expected profit in trade, and commission on goods, bottomry claims, average and other claims which shall be covered by the ship, freight, or cargo. The insurer is at liberty to re-insure the risk undertaken (re-insurance).

**231.** Insurance may be effected for one's own or another's account, or without stating whether the insurance is effected for one's own or another's account ("for the account of the party concerned" or the like).

In effecting an insurance for the account of another person without orders, express mention thereof shall be made by the person effecting the insurance. In default of so doing the insurance shall, even if subsequently acknowledged by the party for whose account it has been ordered, be void, and the insurer shall, nevertheless, be entitled to the insurance premium.

Chapter X.  
Marine Insurance.

1.

## General Rules.

**230.** Every legal value or interest convertible into money, and dependent upon the preservation and the maintenance of the value of ship or cargo, exposed to the perils of the seas, can be made the object of insurance.

In particular the following are objects for insurance, i. e. ship, freight, equipment of ship, cargo, expected profit and commission on merchandise, bottomry claim, monies advanced or borrowed for the sake of average, as well as any other debt payable by ship, cargo or freight. Underwriters shall have the right themselves to insure any interest which they may have insured for another person against any risk and danger that they may have underwritten (Re-insurance).

**231.** An insurance may be either taken on one's own account or for account of some other person, or else without any statement as to whether the insurance is taken for one's own account or for some one else ("for the party concerned" or the like).

If an insurance is taken for account of another person, without authority to do so, the person applying for the insurance shall expressly state such fact to the underwriters. Should the former fail to make such statement, the insurance shall be null and void and the premium forfeited, although the person for whose account the insurance has been taken subsequently approves thereof.

*To Chap. 10.* In the drafting of the Law relating to marine insurance the intention of the legislatures was not to go beyond the general principles regarding the matter and to leave the fixing of the details to be specially provided for by contracts of insurance. The provisions of the 10th Chap. are therefore not compulsory, but give way to insurance agreements, general as well as special. The general conditions of marine insurance are in *Denmark* contained in the Convention confirmed by the King of 2nd April 1850 in regard to the Marine Insurance Company of Copenhagen authorized by Royal concession, to the effect that the rules and conditions of this establishment in the main must be observed by all insurers in Denmark. A revision of the convention commenced with the view of making it conform with the Maritime Law has not yet been brought to a termination. The corresponding general conditions of this kind in *Norway* are to be found in: the revised Norwegian marine insurance scheme of Sept. 1894, which serves to amplify the Maritime Law, the principles of which it has generally adopted as much as possible. The scheme has subsequently been revised several times, the last time in 1907. In regard to *Sweden* the conditions of marine insurance are contained in the general Swedish scheme for marine insurance, a scheme which also nearly approaches the Maritime Law.

## Dansk Text.

**232.** Forsikreren er paa Forlangende pligtig at meddele Forsikringstageren skriftligt Bevis for den afsluttede Forsikring (Police).

**233.** En Genstands virkelige Værdi er den Værdi, for hvilken den kan forsikres (dens Forsikringsværdi).

**234.** Tager nogen i svigagtig Hensigt Forsikring paa en Genstand for et Beløb, der overstiger Forsikringsværdien, er Kontrakten eller, hvis der om Forsikringen er afsluttet flere særskilte Kontrakter, da samtlige disse ugyldige.

**235.** Er Genstanden i god Tro bleven forsikret ud over Værdien, staaer Forsikringen ved Magt, men alene for det Beløb, som svarer til Forsikringsværdien.

Er Genstanden forsikret hos flere mod samme Fare, og ere Forsikringerne afsluttede paa samme Dag, hæfter enhver af Forsikrerne for en saa stor Del af Forsikringsværdien, som den af ham tegnede Forsikringssum udgør af det samlede Beløb af af samtlige Forsikringssummer. Ere Forsikringerne derimod afsluttede paa forskellige Dage, da gælder den yngre Forsikring kun, for saa vidt som Forsikringsværdien ikke er dækket ved den ældre Forsikring.

Den yngre Forsikring beholder dog Gyldighed:

1. Naar ved dens Afslutning Rettighederne ifølge den ældre Forsikring overdrages til den senere Forsikrer;
2. Naar der ved dens Afslutning vedtages, at den yngre Forsikring kun skal kunne gores gældende, for saa vidt som den forsikrede ikke bliver dækket ved den ældre Forsikring, enten som Følge af den Ugyldighed eller af Forsikrerens Uvederhæftighed;

## Norsk Text.

**232.** Forsikreren er paa Forlangende pligtig til at meddele Forsikringstagerens skriftligt Bevis for den afsluttede Forsikring (Police).

**233.** En Gjenstands virkelige Værdi er dens Forsikringsværdi.

**234.** Tager Nogen i svigagtig Hensigt Forsikring paa en Gjenstand for et Beløb, der overstiger Forsikringsværdien, er Kontrakten eller, hvis der om Forsikringen er afsluttet flere særskilte Kontrakter, da samtlige disse ugyldige.

**235.** Er Gjenstanden i god Tro bleven forsikret udover Værdien, staaer Forsikringen ved Magt, men alene for det Beløb, som svarer til Forsikringsværdien.

Er Gjenstanden forsikret hos flere mod samme Fare, og er Forsikringerne afsluttede paa samme Dag, hæfter enhver af Forsikrerne for en saa stor Del af Forsikringsværdien, som den af ham tegnede Forsikringssum udgør af det samlede Beløb af samtlige Forsikringssummer. Er Forsikringerne derimod afsluttede paa forskellige Dage, da gælder den yngre Forsikring kun forsaavidt, som Forsikringsværdien ikke er dækket ved den ældre Forsikring.

Den yngre Forsikring beholder dog Gyldighed:

1. Naar ved dens Afslutning Rettighederne ifølge den ældre Forsikring overdrages til den senere Forsikrer;
2. Naar det ved dens Afslutning vedtages, at den yngre Forsikring kun skal kunne gores gældende, forsaavidt som den forsikrede ikke bliver dækket ved den ældre Forsikring, enten som Følge af den Ugyldighed eller af Forsikrerens Uvederhæftighed;

## Svensk text.

**232.** Försäkringsgifvaren åligger att utfärda skriftligt erkännande angående slutet försäkring (polis).

**233.** Ett försäkradt föremåls verkliga värde är dess försäkringsvärde.

**234.** Tager någon svikligen å ett föremål försäkring till belopp, som öfverstiger föremålets verkliga värde, vare försäkringsaftalet eller, der försäkringen slutits genom flera särskilda aftal, samtliga aftalen ogilda.

**235.** Har föremål blifvit i god tro för högt försäkradt, vare försäkringen gällande, dock icke för större belopp, än som motsvarar försäkringsvärdet.

Är föremålet försäkradt hos flere, och hafva försäkringarne slutits å samma dag, svare enhver af försäkringsgifvarne för så stor del af försäkringsvärdet, som belöper å den af honom tecknade försäkringssumma i förhållande till samtliga försäkringssummornas belopp; åro försäkringarne slutna å särskilda dagar, gälla en senare försäkring endast för så stor del af försäkringsvärdet, som icke blifvit genom en tidigare försäkring betäckt.

En senare försäkring vare dock gällande:

1. Om vid dess ingående försäkringstagaren till försäkringsgifvaren afstått de honom på grund af den tidigare försäkringen tillkommande rättigheter;
2. Om vid dess ingående försäkringstagaren förbehållit sig att göra den gällande endast i den mån, han ej blifver betäckt genom den tidigare försäkringen, till följd af vare sig dennas ogiltighet eller försäkringsgifvarens obestånd;

ad § 232. D. og N. bruger her Ordet „Forsikringstager“, medens de ellers overalt, ogsaa der, hvor der tales om den for egen Regning kontraherende Forsikringstager bruger Ordet „Forsikrede“; derimod taler S. stedsom om „Forsikringstageren“, uanset om der handles om „Forsikringstageren“ eller „Forsikrede“.

## Danish Text.

**232.** The underwriter is, on demand, bound to give the insured party a written acknowledgment for the insurance effected (policy).

**233.** The real value of an object insured constitutes the value for which the said object can be insured (its insurance value).

**234.** If a person, with the intention of defrauding, insures anything for an amount exceeding its insurance value, the contract, or, if several separate contracts have been made, all these contracts, shall be null and void.

**235.** If anything in good faith has been insured for an amount exceeding its value, the insurance shall remain in force, but only for the amount corresponding to the insurance value.

If anything has been insured with several underwriters against the same risk, and the insurances have been effected on the same day, each underwriter shall be liable for so much of the insurance value as corresponds to the insurance sum accepted by him in proportion to the joint amount of all the insurances. If the insurances have been effected on different days, the insurance of a later date shall only be in force in so far as the insurance value is not covered by the older insurance.

A later insurance remains, however, in force:

1. If, on effecting the insurance, the rights according to the older insurance are transferred to the subsequent underwriter;
2. If, on effecting the insurance, it is stipulated that the subsequent insurance shall be urged only in so far as the insured party is not fully compensated by the older insurance, either owing to the latter not being valid, or on account of the underwriter's insolvency;

## Norwegian Text.

**232.** When demanded, it shall be incumbent on the insurer to deliver to the party effecting the insurance a written acknowledgment of the insurance effected (Policy).

**233.** The actual value of a thing insured shall represent its insurance value.

**234.** Should anyone, with fraudulent intent, effect an insurance on a thing for an amount which exceeds its insurance value, the contract shall be void; and if, in respect to the insurance, several separate contracts have been effected, they shall one and all be void.

**235.** If a thing has been insured bona fide, for an amount exceeding its value, the insurance shall remain in force, but only for an amount corresponding to the insurance value.

If the thing has been insured with several insurers against the same risk, each insurer shall, if the different insurances have been effected the same day, be liable for so large a share of the whole value of the insurance as the amount insured by him may bear to the sum total of all the amounts insured. If, on the other hand, the insurances are effected on different days, the later insurance shall only remain in force provided the insurance value is not covered by the older insurance.

The later insurance shall, however, remain in force:

1. When, in concluding the insurance, the rights granted by the older insurance are assigned to the later insurer;
2. When, in concluding the insurance, it is agreed that the later insurance shall only take effect if the insured is not covered by the older insurance, owing either to its invalidity or to the insolvency of the insurer;

## Swedish Text.

**232.** It shall be the duty of the underwriters to issue a written acknowledgment (Policy) regarding the insurance effected.

**233.** The actual value of an object insured constitutes the insurance value.

**234.** If a person fraudulently insures anything to an amount exceeding its actual value, the insurance agreement, or, where insurance has been effected by several agreements, all such agreements, shall be null and void.

**235.** If anything has been too highly insured in good faith, the insurance shall remain in force, though not to any higher amount than that corresponding to the insurance value.

If insured with several and the insurances have been effected on one and the same date, each underwriter shall be responsible for so much of the insurance value as corresponds to the insurance amount accepted by him in proportion to the joint amount of the insurances. If the insurances are taken on different days, the insurance of a latter date is only in force for such portion of the insurance, as is not covered by any insurance previously taken.

A subsequent insurance shall, however, be in force in the following cases:

1. If, when effecting the insurance, the insured party has resigned to the underwriters all the rights due and coming to him on the strength of the insurance previously taken;
2. If, when taking the insurance, the party insured has reserved the right to enforce the insurance only so far as he is not protected by the insurance taken previously, either owing to any invalidity of the previous insurance, or any insolvency of the underwriters;

To § 232. D. and N. here use the word "Forsikringstager", whereas everywhere else, also where the insurer who concludes contracts for his own account is spoken of, they use the word "Forsikrede"; S. on the other hand always speaks of the "Forsikringstageren", whether it is question of the "insurance taker" or the "insured".

3. Naar den ældre Forsikring er afsluttet for den forsikredes Regning uden dennes Ordre, den yngre derimod paa Begjæring af den forsikrede selv, og denne ved Forsikringens Afslutning enten har været uvidende om den ældre Forsikring eller har erklæret at ville give Afkald paa den.

236. Naar en Forsikring helt eller delvis bliver ugyldig paa Grund af manglende Forsikringsinteresse, Overforsikring eller dobbelt Forsikring, har Forsikreren ikke desto mindre Krav paa Forsikringspræmien, medmindre han paa den Tid, han overtog Forsikringen, var vidende om den Omstændighed som gjorde samme ugyldig. Den forsikrede har dog Ret til Ristorno overensstemmende med § 266.

237. Er Forsikringssummen mindre end Forsikringsværdien erstatter Forsikreren kun en saa stor Del af Skaden, som Forsikringssummen udgør af Forsikringsværdien.

238. Er en Gjenstand ved Overenskomst mellem Parterne ansat til en bestemt Værdi (takseret Police), bliver saadan Ansættelse bindende, dog med Ret for Forsikreren til at faa Værdien nedsat, naar den godtgøres at overstige, hvad med Rimelighed kunde anses som den virkelige Værdi paa den Tid, da Ansættelsen skete.

239. Har Forsikreren betalt en Skade, for hvilken den forsikrede kan fordre Erstatning hos Tredjemand, indtræder han i den forsikredes Ret mod denne.

Har en Fordringshaver taget Forsikring paa Gjældsfordring, for hvilken en for Sjøfare udsat Gjenstand hæfter, og denne Gjenstand lider Skade eller gaar tabt, indtræder Forsikreren i Fordringshaverens Ret mod Skyldneren for saa stor Del af Fordringen, som han har udbetalt i Erstatning.

3. Naar den ældre Forsikring er afsluttet for den Forsikredes Regning uden dennes Ordre, den yngre derimod paa Begjæring af den Forsikrede selv, og denne ved Forsikringens Afslutning enten har været uvidende om den ældre Forsikring eller har erklæret at give Afkald paa den.

236. Naar en Forsikring helt eller delvis bliver ugyldig paa Grund af manglende Forsikringsinteresse, Overforsikring eller dobbelt Forsikring, har Forsikreren ikke destomindre Krav paa Forsikringspræmien, medmindre han paa den Tid, han overtog Forsikringen, var vidende om den Omstændighed, som gjorde samme ugyldig. Den Forsikrede har dog Ret til Ristorno overensstemmende med § 266.

237. Er Forsikringssummen mindre end Forsikringsværdien, erstatter Forsikreren kun en saa stor Del af Skaden, som Forsikringssummen udgjør af Forsikringsværdien.

238. Er en Gjenstand ved Overenskomst mellem Parterne ansat til en bestemt Værdi (takseret Police), bliver saadan Ansættelse bindende, dog med Ret for Forsikreren til at faa Værdien nedsat, naar den godtgøres at overstige, hvad der med Rimelighed kunde anses for den virkelige Værdi paa den Tid, da Ansættelsen skede.

239. Har Forsikreren betalt en Skade, for hvilken den Forsikrede kan fordre Erstatning hos Trediemand, indtræder han i den Forsikredes Ret mod denne.

Har en Fordringshaver taget Forsikring paa Gjældsfordring, for hvilken en for Sjøfare udsat Gjenstand hæfter, og denne Gjenstand lider Skade eller gaar tabt, indtræder Forsikreren i Fordringshaverens Ret mod Skyldneren for saa stor Del af Fordringen, som han har udbetalt i Erstatning.

3. Om den tidigare försäkringen är tagen för annans räkning utan uppdrag, men den senare af försäkringstagaren själf eller efter hans uppdrag, så vida han vid den senare försäkringens ingående antingen varit okunnig om den tidigare försäkringen eller förklarar sig vilja derifrån afstå.

236. Kommer tecknad försäkring på grund af bristande försäkringsintresse, öfverförsäkring eller dubbel försäkring att helt och hållet eller till en del förfalla, ege försäkringsgifvaren ändock rätt till premien, der han ej vid försäkringens afslutande egde kunskap om den omständighet, som gjorde försäkringen ogild; dock njute försäkringstagaren den rätt till ristorno, som i 266 § sägs.

237. Understiger försäkringssumman försäkringsvärdet, ersätte vid timad skada försäkringsgifvaren endast så stor del af skadan, som svarar mot försäkringssummans förhållande till försäkringsvärdet.

238. Är genom öfverenskomelse mellan parterna visst värde åsatt försäkradt föremål (taxerad eller sluten polis), vare det värde dem emellan gällande såsom föremålets försäkringsvärde, dock med rätt för försäkringsgifvaren att deri erhålla nedsättning, der det visas, att samma värde, när det bestämdes, öfversteg hvad skäligen kunde anses utgöra föremålets verkliga värde.

239. Har försäkringsgifvaren ersatt skada eller förlust, för hvilken försäkringstagaren var berättigad att fordra ersättning af tredje man, inträder han i försäkringstagarens rätt mot denne.

Är försäkring tagen å fordran, för hvilken ett för fara å sjön utsatt föremål hæftar, och skadas det föremål eller går förloradt, vare försäkringsgifvaren, i den mån, han godtgör försäkringstagaren, berättigad att inträda i dennes rätt mot gäldenären.

## Danish Text.

3. If the older insurance has been effected on behalf of the insured party without his orders, the subsequent insurance, on the contrary, at the request of the insured party himself, and he, when this insurance was effected, either was unaware of the previous insurance, or has declared himself willing to give it up.

**236.** Should an insurance on account of lack of insurance interest, over-insurance or double insurance, wholly or partly become null and void, the underwriter shall, nevertheless, be entitled to the premium, unless he, at the time of accepting the insurance, was aware of the circumstances which rendered the insurance illegal. The insured party has, however, a right to Ristorno in accordance with § 266.

**237.** If the insurance-sum is inferior to the insurance value, the underwriter only compensates for such portion of the damage as corresponds to the insurance sum in proportion to the insurance value.

**238.** If anything by agreement between two parties has been estimated at a certain value (taxed policy), such estimation shall be binding; but the underwriter shall have a right to obtain a reduction, if it is proved that the aforesaid value exceeds what might fairly be considered to be the real value at the time the estimation was made.

**239.** Should the underwriter have compensated for any damage for which the insured party can demand compensation from a third party, the rights of the insured against such party are conferred upon him.

If an insurance is effected by a creditor on a claim for which anything exposed to the perils of the sea is given as security, and this is damaged or lost, the underwriter enters into the rights of the creditor against the debtor for that portion of the claim which he has paid down as compensation.

## Norwegian Text.

3. When the older insurance has, without the orders of the insured, been effected for his account; the later, on the other hand, at the request of the insured himself, when on concluding the insurance, he was either unaware of the older insurance, or else declared that he would renounce it.

**236.** When an insurance becomes void, entirely or partly, on account of the lack of sufficient value, overinsurance, or repetition of insurance, the insurer shall, nevertheless, be entitled to the insurance premium unless, at the time he undertook the insurance, he was aware of the circumstance which rendered it invalid. The insured shall, however, be entitled to have the premium refunded subject to the rules of § 266.

**237.** If the amount of insurance is less than the insurance value, the insurer shall only make good so large a share of the loss as the amount of insurance bears to the insurance value.

**238.** If the parties have mutually agreed to fix a thing at a certain value (valued policy), such agreement shall be binding, but the insurer shall be entitled to have the value reduced, when it is proved to exceed what ought reasonably to be considered as the actual value at the time the assessment was made.

**239.** If the insurer has paid a loss for which the insured can claim reimbursement from a third person, he shall become possessed of and entitled to the right of the insured against the third person.

If a creditor has insured a claim for debt for which a thing exposed to peril at sea is liable, the insurer shall, if the thing is damaged or lost, become possessed of and entitled to the creditor's claim against the debtor for so large an amount of the claims as has been paid by him in compensation.

## Swedish Text.

3. If the previous insurance is taken for account of another person without authority, but the latter by the insured person himself, provided at the time of taking the latter insurance, the party insured was unaware of the previous insurance, or has declared his willingness to renounce the same.

**236.** Should an underwritten insurance on account of lack of insurance interest, over-insurance or double insurance wholly or partly become null and void, the underwriter shall nevertheless be entitled to the premium, unless, at the time of accepting the insurance, he was aware of the circumstances rendering the insurance illegal; the party insured, however, to be entitled to ristorno as mentioned in Art. 266.

**237.** If the insurance value exceeds the total insurance amount, the underwriter shall, if damage occurs, only pay for such portion of the damage as corresponds with the insurance, amount in proportion to the insurance value.

**238.** If by agreement between the parties, a certain value has been attached to the article or interest insured (taxed or closed policy), such value shall between them be the insurance value thereof; the underwriters, however, to be entitled to a reduction, when it is proved that the aforesaid value, at the time the agreement was made, exceeded what fairly could be considered to be its actual value.

**239.** When the underwriters have compensated for any damage or loss for which the party insured was entitled to claim compensation from a third party, the rights of the insured as against such party shall be conferred upon them.

If an insurance is taken on a claim upon any interest, security, article or other object of insurance exposed to the perils of the seas, and such interest, security, article or other object of insurance is lost or damaged, the rights of the party insured as against the debtor shall be transferred to the underwriters in the same proportion as the insured has been indemnified by them.

Den forsikrede kan fordr Erstatning af Forsikreren uden først at have gjort sin Ret gældende mod den erstatningspligtige eller mod Skyldneren, jfr. dog § 250.

Den Forsikrede kan fordr Erstatning af Forsikreren uden først at have gjort sin Ret gældende mod den Erstatningspligtige eller mod Skyldneren, jfr. dog § 250.

Försäkringstagaren ege fordra sin ersättning af försäkringsgifvaren utan att först hafva gjort sitt anspråk gäldande mot den, som bör ersätta skadan, eller mot gäldenären.

240. Er Forsikreren kommen under Konkurs eller ved Eksekution funden at mangle Midler til at betale sin Gæld, eller har han standset sine Betalinger, har den forsikrede Ret til at ophæve Forsikringen og faa Præmien tilbage, hvis ikke Forsikreren paa Anfordring stiller Sikkerhed for Kontraktens nøjagtige Opfyldelse; har i dette Tilfælde den forsikrede Genstand allerede været udsat for Fare, har Forsikreren Ret til at beholde en forholdsmæssig Andel af Præmien.

240. Er Forsikreren kommen under Konkurs eller ved Eksekution funden at mangle Midler til at betale sin Gjæld, eller har han stanset sine Betalinger, har den Forsikrede Ret til at ophæve Forsikringen og fordr Præmien tilbage, hvis ikke Forsikreren paa Opfordring stiller Sikkerhed for Kontraktens nøjagtige Opfyldelse; har i dette Tilfælde den forsikrede Gjenstand allerede været udsat for Fare, har Forsikreren Ret til at beholde en forholdsmæssig Andel af Præmien.

240. Har försäkringsgifvare kommit i konkursstillstånd eller vid utmätning funnits sakna tillgång att betala sin gäld eller ock inställt sina betalningar, ege försäkringstagaren rätt att häfva försäkringen och återfå premien, der icke försäkringsgifvaren vid anfordran ställer säkerhet för aftalets fullgörande; har, när försäkring sålunda återgår, det försäkrade föremålet redan varit utsatt för fara, ege försäkringsgifvaren behålla motsvarande andel af premien.

#### Andet Afsnit.

### Om den forsikredes Forpligtelser.

241. Den forsikrede saavel som den, der tager Forsikringen for hans Regning, og enhver anden, der som Mellemmand medvirker til Forsikringens Istandbringelse, skal ved dens Afslutning nøjagtig og sandfærdig opgive alle ham bekendte Omstændigheder, der kunne være af Betydning med Hensyn til Bedømmelsen af den Fare, Forsikreren paatager sig, og af Vilkaarene for Forsikringens Overtagelse.

242. Sker der Forsømmelse med Hensyn til de i § 241 omhandlede Angivelser, og den ikke opgivne Omstændighed ved Kontraktens Afslutning ikke var bekendt og heller ikke med Foie kunde forudsættes at være bekendt for Forsikreren, er Kontrakten ikke bindende for denne; han har desuagtet Krav paa Præmien; jfr. dog § 266.

Har den forsikrede eller en anden, der var forpligtet til at gøre saadan Angivelse, saa sent erholdt Kundskab om den Omstændighed, der skulde været opgivet, at han kun ved at an-

#### Andet Afsnit.

### Om den Forsikredes Forpligtelser.

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Har den Forsikrede eller en Anden, der var forpligtet til at gøre saadan Angivelse, saa sent erholdt Kundskab om den Omstændighed, der skulde være opgivet, at han kun ved at an-

#### II.

### Om försäkringstagarens förbindelser.

241. Försäkringstagaren, den som för hans räkning försäkringen sluter, så ock enhvar annan, som med försäkringens afslutande tager befattning, vare skyldig att vid aftalets ingående fullständigt och sannfärdigt uppgifva alla de omständigheter, hvarom försäkringstagaren sjelf såväl som de, hvilka i afseende å försäkringen handla för hans räkning, ega kännedom, så vida samma omständigheter kunna vara af betydelse för bedömande af den fara, försäkringsgifvaren öfvertager, och af villkoren för dess öfvertagande.

242. Lemnas icke sådan uppgift, som i 241 § omförmäles, vare försäkringen ogild och premien förverkad, der icke den omständighet, hvilken icke uppgifvits, vid aftalets ingående var eller skäligen kunde förutsättas vara försäkringsgifvaren bekant; dock njute försäkringstagaren den rätt till ristorno, som i 266 § sägs.

Har försäkringstagaren eller annan, hvilken det ålegat att lemna uppgift, som i 241 § sägs, så sent erhållit kunskap om den omständighet, som bort uppgifvas, att han icke utan vidta-

## Danish Text.

## Norwegian Text.

## Swedish Text.

The party insured has the right to claim compensation to be paid by the underwriters, without previously having advanced his claim against the person liable to pay the compensation, or against the debtor, *cfr.*, however, § 250.

**240.** If the underwriter becomes bankrupt, or it is proved by the execution of a judgment that he has no means to pay his debt, or he has suspended payment, the insured party has the right to annul the insurance and to have the premium returned, unless the underwriter on demand deposits security for the exact fulfilment of the contract; if, in this case, the object of insurance has already been exposed to danger, the underwriter has a right to retain a proportionate amount of the premium.

## II.

## Respecting the obligations of the party insured.

**241.** The party insured, as well as the person who effects the insurance on his account, and anybody else who as negotiator has anything to do with the effecting of the insurance, shall, on entering into the agreement, precisely and truthfully state each and every circumstance known to him, which might be of importance for the calculation of the danger to which the underwriters expose themselves, and for the terms for the effecting of the insurance.

**242.** If any negligence should take place with reference to the statements according to § 241, and the circumstance not stated at the time of concluding the contract was not known to the underwriter, nor could reasonably be supposed to be known to him, the insurance is not binding for the latter; nevertheless, he is entitled to the premium, *cfr.* however § 266.

If the party insured, or anybody else who was bound to make such a statement, has received information of the circumstance, which should have been stated, so late, that

The insured shall be entitled to claim reimbursement from the insurer without having previously enforced his claim against the party responsible for the loss, or the debtor, subject however to the rules of § 250.

**240.** If the insurer has been adjudged bankrupt, or, under the proceedings of an execution, is found to have insufficient means for the payment of his debts, or if he has stopped payment, the insured shall be entitled to annul the insurance and demand the return of the premium, provided the insurer does not, when demanded, give security for the proper fulfilment of the contract. If, in such a case, the thing insured has already been exposed to any risk, the insurer shall be entitled to retain a proportionate share of the premium.

## Part II.

## The obligations of the insured.

**241.** The insured, and the person effecting the insurance for his account, and every other person assisting as an intermediary in bringing about the insurance, shall, in concluding it, state precisely and candidly all facts known to them that may be of importance in judging the risk to be undertaken by the insurer, and the conditions on which the insurance shall be undertaken.

**242.** If any omission has been made in regard to the statements mentioned in § 241, the contract of insurance shall, if the fact omitted in concluding the contract was not known, or could not reasonably be supposed to have been known to the insured, not be binding on the insurer, who shall nevertheless be entitled to claim the premium, subject, however, to the rules of § 266.

If the insured, or any other person whose duty it was to have given such information, has himself received notice of a fact that ought to have been stated, so late as not to

The party insured shall have the right to claim his compensation from the underwriters, without previously having substantiated his claim against the person liable to pay the damage or against the debtor.

**240.** If any underwriter becomes a bankrupt or is proved, in the execution of a judgment, to possess no assets for the payment of the debt, or has stopped payment, the party insured shall have the right to annul the insurance and have the premium returned, unless the underwriter, on requisition, places security for the fulfilment of the said agreement. If the insured object has already, at the time of the annulling of the insurance, been exposed to danger, the underwriters shall have to retain the corresponding amount of the premium.

## Part. II.

## The obligations of the insured.

**241.** It is the duty of the party taking an insurance, or the person effecting the insurance on his behalf, or any other person having anything to do with the concluding of the insurance, on entering into the agreement, to state fully and truly each and every circumstance known to the party taking the insurance, as well as to the persons acting for him in and about the insurance, provided the said circumstances might be of importance for the judging of the danger covered by the underwriters and of the conditions for such covering.

**242.** If the statement referred to in Art. 241 is not made, the insurance shall be null and void and the premium forfeited, unless the circumstance omitted to be stated was, or could reasonably be supposed to have been, known to the underwriters at the time of making the agreement; the party insuring, nevertheless, to be entitled to *ristorno* as mentioned in Art. 266.

If the party insured, or any other person bound to furnish such statement as mentioned in Art. 241, receives information regarding the circumstance which should have been



## Dansk Text.

vende ganske usædvanlige Foranstaltninger havde kunnet meddele Forsikreren Underretning derom inden Forsikringens Afslutning, skal hans Undladelse heraf ikke medføre Forsikringens Ugylldighed. Er Forsikring taget uden den forsikredes Ordre og Vidende, bliver den ikke ugyldig, fordi der ikke er givet Forsikreren Meddelelse om en Omstændighed, der vel var bekendt for den forsikrede, men ikke for den, der sluttede Forsikringen.

243. Er der gjort urigtig Angivelse med Hensyn til nogen af de i § 241 omhandlede Omstændigheder, bliver, selv om Angivelsen er sket i god Tro, Forsikringen uforbindende og Præmien forbrudt (jfr. dog § 266, medmindre Forsikreren ved Forsikringens Afslutning havde Kendskab til det rette Forhold.

244. Angaar den Omstændighed, der ikke er bleven opgivet, eller hvorom urigtig Angivelse er sket, kun en Del af de forsikrede Genstande, bliver Kontrakten gældende for den øvrige Del af disse, medmindre det maa antages, at Forsikreren ikke vilde have overtaget Forsikringen for denne Del alene paa det for det hele vedtagne Betingelser, hvis han havde kendt det rette Forhold.

245. Saa snart det bliver den forsikrede bekendt, at en forsikret Genstand er ramt af en Ulykke, der falder ind under Forsikrerens Ansvar, skal han meddele denne Underretning derom og indhente hans Ordre med Hensyn til de Foranstaltninger, der bør træffes til at redde og bevare det forsikrede og afværge større Skade; indtil han erholder Forholdsregler fra Forsikreren, har han dog selv at foretage, hvad der i denne Henseende udfordres. Forsømmer den forsikrede noget af, hvad der saaledes paaligger ham, bærer han selv det deraf følgende Tab.

## Norsk Text.

vende ganske usædvanlige Foranstaltninger havde kunnet meddele Forsikreren Underretning derom inden Forsikringens Afslutning, skal hans Undladelse heraf ikke medføre Forsikringens Ugylldighed. Er Forsikring taget uden den Forsikredes Ordre og Vidende, bliver den ikke ugyldig, fordi der ikke er givet Forsikreren Meddelelse om en Omstændighed, der vel var bekendt for den Forsikrede, men ikke for den, der sluttede Forsikringen.

243. Er der gjort urigtig Angivelse med Hensyn til nogen af de i § 241 omhandlede Omstændigheder, bliver, selv om Angivelsen er skeet i god Tro, Forsikringen uforbindende og Præmien forbrudt (jfr. dog § 266), medmindre Forsikreren ved Forsikringens Afslutning havde Kjendskab til det rette Forhold.

244. Angaar den Omstændighed, der ikke er bleven opgivet, eller hvorom urigtig Angivelse er skeet, kun en Del af de forsikrede Gjenstande, bliver Kontrakten gjældende for den øvrige Del af disse, medmindre det maa antages, at Forsikreren ikke vilde have overtaget Forsikringen for denne Del alene paa det for de Hele vedtagne Betingelser, hvis han havde kjendt det rette Forhold.

245. Saasart det bliver den Forsikrede bekendt, at en forsikret Gjenstand er rammet af en Ulykke, der falder ind under Forsikrerens Ansvar, skal han meddele denne Underretning derom og indhente hans Ordre med Hensyn til de Foranstaltninger, der bør træffes til at redde og bevare det Forsikrede og afværge større Skade; indtil han erholder Forholdsregler fra Forsikreren, har han dog selv at foretage, hvad der i denne Henseende udfordres. Forsømmer den Forsikrede Noget af, hvad der saaledes paaligger ham, bærer han selv det deraf følgende Tab.

## Svensk text.

gande af utomordentliga åtgärder kunnat vid aftalets ingående derom underrätta försäkringsgifvaren, vare hans underlåtenhet i berörda hänseende icke till hinder för aftalets giltighet; ej heller må, när försäkring tagits för annans räkning utan dennes uppdrag eller vetskap, bristande uppgift af någon omständighet, som varit försäkringstagaren men ej den, hvilken tog försäkringen, bekant, verka till försäkringens återgång.

243. Har angående sådan omständighet, som i 241 § omförmåles, oriktig uppgift lemnats, vare, ändå att uppgiften skett i god tro, försäkringen ogild och premien förverkad, der icke rätta förhållandet var försäkringsgifvaren bekant när aftalet ingicks; dock njute försäkringstagaren den rätt till ristorno, som i 266 § sägs.

244. Angår omständighet, som icke uppgifvits eller hvarom oriktig uppgift lemnats, endast en del af de försäkrade föremålen, vare aftalet i afseende å den öfriga delen gällande, der icke antagas må, att försäkringsgifvaren, om rätta förhållandet varit honom bekant, icke skulle hafva teeknat försäkring å denna del allena på de vilkor, som för det hela aftalats.

245. Vid första underrättelse, försäkringstagaren håller om olycka, som träffat försäkradt föremål och som faller under försäkringsgifvarens ansvarighet, kungöra han det försäkringsgifvaren och inhämta dennes föreskrift om hvad lämpligast bör åtgöras till de försäkrade föremålens bergning och vård ävensom till afvärjande af större förlust; besörje dock sjelf, till dess försäkringsgifvarens föreskrift ankommer, hvad i sådant hänseende kan erfordras. Uraktlåter försäkringstagaren utan giltigt skäl att underrätta försäkringsgifvaren om olyckan eller att, på sätt nyss är sagdt, bevaka hans



## Danish Text.

## Norwegian Text.

## Swedish Text.

he only by employing wholly extraordinary measures would have been able to inform the underwriter of it before the concluding of the insurance, his negligence in this respect shall not make void the insurance. If the insurance has been effected without the knowledge or the orders of the insured party, this insurance does not become null and void, because a circumstance which was known to the insured party but not to him who effected the insurance, was not stated to the underwriter.

**243.** If an incorrect statement has been made regarding any of the circumstances mentioned in § 241, the insurance shall not be binding and the premium be forfeited, even if the statement has been made in good faith (cfr. however § 266), unless the true circumstances were known to the underwriter when the insurance was effected.

**244.** If the circumstance which has not been stated or about which a wrong statement has been made, only refers to a certain portion of the objects insured, the contract, as regards the other portion, remains in force, unless it is to be supposed that the underwriter would not, if the true circumstances of the case had been known to him, have assumed an insurance for that portion alone on the conditions agreed on for the whole.

**245.** On receiving the first intimation of an accident occurred to anything insured, for which the underwriters are responsible, the insured party should notify the same to the underwriters and procure their instructions as regards the measures to be taken for the salvage and preservation of the insured property and for the avoiding of any greater loss; he must, however, until the arrival of the directions of the underwriter, himself do all that is requisite for such purpose. Should the insured party neglect to do anything of what is thus incumbent on him, he shall

have been able, without taking exceptional measures, to inform the insurer thereof before the conclusion of the insurance, his omission to do so shall not invalidate the insurance. If the insurance has been effected without the orders and knowledge of the insured, it shall not become void because of the insurer not having been informed of a fact that was known to the insured but not to the person concluding the insurance.

**243.** If incorrect statements have been made as to any of the facts referred to in § 241, the insurance shall, even if the statements have been made bona fide, not be binding, and the premium shall be forfeited (subject, however, to the rules of § 266), unless the insurer was aware of the real facts when the insurance was effected.

**244.** If the fact, which has either not been stated at all, or incorrectly stated, concerns only part of the property insured, the insurance shall remain in force for the remainder, unless it may be assumed that the insurer, if aware of the real facts, would not have undertaken the insurance on this sole portion on the same conditions as for the whole.

**245.** On receiving notice of any accident having occurred to the property insured, and falling under the risk undertaken by the insurer, the insured shall immediately inform the insurer thereof, and procure his orders as to the measures to be taken for saving and preserving the property insured and averting further loss, and, until he receives orders from the insurer, he shall himself do what is required in this respect. If the insured neglects any of the duties thus incumbent on him, he shall himself bear any loss resulting therefrom.

stated, so late that he has not been in a position to inform the underwriters at the time of concluding the insurance, except by employing extraordinary measures, his neglect in the above respects shall not interfere with the validity of the agreement; neither shall, when any person, in taking an insurance for account of another person without the knowledge or authority of the latter, omits to state any circumstance, of which the party insured, but not the person who took the insurance, was aware, such omission render the insurance null and void.

**243.** If any incorrect statement has been made regarding any of the circumstances referred to in Art. 241, the insurance shall be null and void and the premium forfeited, in spite of the statement being made in good faith, unless the true circumstances of the case were known to the underwriters when making the agreement; the party insured shall, however, be entitled to *ristorno* as mentioned in Art. 266.

**244.** If any circumstance which has not been stated, or about which a wrong statement has been made, only refers to a certain portion of any insured interest, article or other object of insurance, the agreement as regards the other portion shall be in force, unless it may be supposed that the underwriters would not, should the true circumstances of the case have been known to them, have accepted any insurance for that portion alone on similar terms as agreed about for the whole.

**245.** On receiving the first intimation of any accident occurred to any insured interest, article or other object of insurance, which is covered by the underwriters, the party insured should notify the same to the underwriters and wait their instructions as regards the proper measures to be taken for the salvage and preservation of any such interest, article or other object insured, and for the avoiding of any greater loss; the party insured, however, to see that whatever is required in this respect is done, until the arrival of the directions of the underwriters. If the party insured fails,

246. Er Forsikreren forpligtet til at erstatte en Skade, for hvilken den forsikrede har Ret til at fordrer Erstatning hos Tredjemand, har den forsikrede i denne Anledning at træffe de efter Omstændighederne nødvendige Foranstaltninger, indtil Forsikreren bliver i Stand til selv at varetage sit Tarv. Forsummer den forsikrede dette, bliver han ansvarlig for det Tab, som maa antages derved at blive paaført Forsikreren.

247. Mod Policeens Overlevelse er den Forsikrede i Mangel af anden Aftale pligtig at erlægge Præmien straks ved Kontraktens Afslutning.

#### Tredje Afsnit.

#### Om Forsikreren's Forpligtelser.

248. Forsikreren svarer, saafremt ingen særlig Undtagelse er gjort, for Følgerne af enhver Fare, hvorfor den forsikrede Genstand udsættes i Forsikringstiden, og hvori den forsikrede ikke selv er Skyld. At Skaden kan tilregnes Skipper eller Mandskab, ophæver ikke Forsikrerens Ansvar.

249. I følgende Tilfælde er Skaden Forsikreren uvedkommende:

1. Ved en Forsikring af Skib eller af Fragt for Rederiets Regning, naar Skaden hidrører derfra, at Skibet ved Rejsens Begyndelse ikke var sødygtigt eller tilbørlig udrustet og bemannet, forsynet med de fornødne Skibsdokumenter eller forsvarlig lastet, eller derfra, at Tredjemand for Skade, der er ham tilføjet ved Skipperens eller

246. Er Forsikreren forpligtet til at erstatte en Skade, for hvilken den Forsikrede har Ret til at fordrer Erstatning hos Tredjemand, har den Forsikrede i denne Anledning at træffe de efter Omstændighederne nødvendige Foranstaltninger, indtil Forsikreren bliver i Stand til selv at varetage sit Tarv. Forsummer den Forsikrede dette, bliver han ansvarlig for det Tab, som maa antages derved at blive paaført Forsikreren.

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#### Tredie Afsnit.

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248. Forsikreren svarer, saafremt ingen særlig Undtagelse er gjort, for Følgerne af enhver Fare, hvorfor den forsikrede Gjenstand udsættes i Forsikringstiden, og hvori den Forsikrede ikke selv er Skyld. At Skaden kan tilregnes Skibsfører eller Mandskab, ophæver ikke Forsikrerens Ansvar.

249. I følgende Tilfælde er Skaden Forsikreren uvedkommende:

1. Ved Forsikring af Skib eller af Fragt for Rederiets Regning, naar Skaden hidrører derfra, at Skibet ved Rejsens Begyndelse ikke er sødygtigt og tilbørlig udrustet og bemannet, forsynet med de fornødne Skibsdokumenter eller forsvarlig lastet, eller derfra, at Tredjemand for Skade, der er tilføjet ham ved Skibsfore-

rätt, vare försäkringsgifvaren ej pligtig att ersätta den förlust, som af sådan anledning tillkommit.

246. Är försäkringsgifvare skyldig att ersätta skada eller förlust, för hvilken försäkrings-tagaren eger fordra ersättning af tredje man, åligge försäkringsgifvaren att, till dess försäkringsgifvaren kommer i tillfälle att bevaka sin rätt, vidtaga de åtgärder, som i sådant hänseende kunna vara af nöden. Försummas det, ege försäkrings-tagaren ej af försäkringsgifvaren fordra ersättning för den förlust, som deraf må uppkomma.

247. Premien skall, der ej annorlunda är öfverenskommet, mot polisens utbekommande erläggas genast efter aftalets afslutande.

#### III.

#### Om försäkringsgifvarens förbindelser.

248. Försäkringsgifvaren vare, der icke särskildt undantag skett, skyldig att vidkännas följden af hvarje fara, för hvilken det försäkrade föremålet utsättes medan försäkringen varar, så vida icke skadan tillkommit genom försäkrings-tagarens vållande.

Ej vare försäkringsgifvaren fri från ansvarighet därför att skadan tillkommit genom vållande af befälhafvare eller besättning.

249. Försäkringsgifvaren vare ej skyldig att ersätta:

1. Vid försäkring af fartyg eller af frakt för redarens räkning — skada, som uppkommer deraf att fartyget vid resans början icke varit i sjövärdigt skick eller behörigen utrustadt eller bemannadt eller försedt med behöriga skeppshandlingar eller försvarligt lastadt, ej heller förlust, hvilken uppstår såsom följd deraf att af

Danish Text.

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himself bear the loss resulting therefrom.

**246.** If the underwriter is bound to compensate any damage for which the party insured is entitled to claim compensation from a third person, it shall be the duty of the party insured, until the underwriter is himself in a position to attend to his interests, to take all measures which, according to the circumstances, may be necessary. Should the insured party fail to do this, he becomes answerable for any loss which the underwriter may be supposed to have sustained through his negligence.

**247.** Unless otherwise agreed, the insured party is, on condition of receiving the policy, bound to pay the premium immediately on the agreement having been entered into.

## III.

## Respecting the obligations of the underwriter.

**248.** Unless special exceptions have been made, the underwriter answers for the consequence of every danger to which the object of insurance may be exposed during the continuation of the insurance, and which is not due to any fault on the part of the insured party.

The fact that the damage may be attributed to the master or the crew does not exempt the underwriter from responsibility.

**249.** In the following cases the damage does not concern the underwriter, i. e.:

1. When the insurance is effected on ship or freight on behalf of the owners, and the damage arises from the ship not having, at the commencement of the voyage, been in a seaworthy condition, or properly equipped and manned, or provided with the requisite ship's documents, or properly loaded; or is caused by the

**246.** If the insurer is bound to make good a loss for which the insured is entitled to compensation from a third person, the insured shall, according to the circumstances, adopt all necessary measures until the insurer himself is able to protect his interests. Should the insured neglect to do this he shall be responsible for the loss which it may be assumed will be occasioned to the insurer by such omission.

**247.** On the delivery of the policy it shall be incumbent on the insured, if not otherwise agreed upon, to pay the premium at once on concluding the contract.

## Part III.

## The obligations of the insurer.

**248.** The insurer shall, provided no special exception has been made, be responsible for the consequence of any risk to which the thing insured has been exposed during the term of the insurance, and which has not been caused by the insured himself.

The insurer shall not be relieved from his responsibility by the fact that the loss is attributable to the master or the crew.

**249.** In the following instances the loss shall not concern the insurer: that is to say:—

1. When a ship or freight is insured for the account of the owners, and the loss is caused by the ship being, at the commencement of the voyage, in an unseaworthy condition, or improperly fitted out and manned, or not provided with the necessary papers, or improperly loaded, or when a third person resorts to the thing insured

without any valid reason, to inform the underwriters of the accident, or to look after their interests in the manner aforementioned, the underwriters shall not be bound to compensate any loss due to such cause.

**246.** If the underwriters are liable to compensate any damage or loss, for which the party insured is entitled to claim compensation from a third person, it shall be the duty of the party insured, until the underwriters are in a position to watch their rights, to take all such steps which in this respect may be required. In default, the party insured shall not be entitled to claim compensation for any loss occasioned thereby.

**247.** Unless otherwise agreed, the premium shall be paid immediately on the agreement having been entered into, against the receipt of the policy.

## III.

## The obligations of the insurer.

**248.** The liability of the underwriters, unless special exceptions are made, shall include the consequence of every danger to which any security, interest, article or other object of insurance may be exposed during the continuation of the insurance, save and except if the damage is caused by any fault or neglect of the party insured.

The underwriters shall not be free from responsibility on account of the damage being caused by any fault or neglect on the part of the master or crew.

**249.** The underwriters shall not be liable in the following cases (that is to say):

1. When the insurance is taken on ship or freight for account of the owners: for any damage caused by the ship at the commencement of the voyage not being in a seaworthy condition, or properly equipped, or manned, or provided with the requisite ship's documents, or properly loaded; nor for any loss sustained in con-

Mandskabets Fejl eller Forsømmelse i Tjenesten, holder sig til den forsikrede Genstand, dog med Undtagelse af Erstatning for Skade ved Sammenstød.

2. Ved Forsikring af Skib, naar Skaden paa Skib eller Tilbehør alene er en Følge af Slid, Alder, Raadenskab eller Ormstik eller deraf, at den beskadede Del ikke ved Rejsens Begyndelse var i forsvarlig Stand.

3. Ved Forsikring af Fragt, Ladning eller Handelsfordel paa Ladning, naar Skaden hidrører fra Mangler ved Godsets Indpakning eller fra saadan Beskaffenhed ved Godset, som nævnes i § 142; dog tilsvarende Forsikreren ogsaa den sidstnævnte Skade, dersom Rejsen er bleven forhalet usædvanlig længe ved Ulykkehændelse, som borer under Forsikreren's Risiko, medmindre det maa antages, at Skaden ikke er en Følge af Opholdet.

4. Ved Forsikring af Ladning eller af Handelsfordel paa Ladning eller af Fragtforskuud, som ikke skal tilbagebetales i Ulykkestilfælde, naar Skaden maa tilregnes Afladeren eller Ladningsmodtageren i hans Egenskab som saadan.

250. Er almindeligt Havari opgjort paa behørigt Sted i Overensstemmelse med der gjældende Lov, har Forsikreren i Henhold til Fordelingen at tilsvare saavel det Havaribidrag, der falder paa den forsikrede Genstand, som de Bidrag til Erstatning af Skade paa den

rens eller Mandskabets Feil eller Forsømmelse i Tjenesten, holder sig til den forsikrede Gjenstand, dog med Undtagelse af Erstatning for Skade ved Sammenstød.

2. Ved Forsikring af Skib, naar Skaden paa Skib eller Tilbehør alene er en Følge af Slid, Alder, Raadenhed eller Orm eller deraf, at den beskadede Del ikke ved Reisens Begyndelse var i forsvarlig Stand.

3. Ved Forsikring af Fragt, Ladning eller Handelsfordel paa Ladning, naar Skaden hidrører fra Mangler ved Godsets Indpakning eller fra saadan Beskaffenhed ved Godset, som nævnes i § 142; dog tilsvarende Forsikreren ogsaa den sidstnævnte Skade, dersom Reisen er bleven forhalet usædvanlig længe ved Ulykkehændelse, som horer under Forsikreren's Risiko, medmindre det maa antages, at Skaden ikke er en Følge af Opholdet.

4. Ved Forsikring af Ladning eller af Handelsfordel paa Ladning eller af Fragtforskuud, som ikke skal tilbagebetales i Ulykkestilfælde, naar Skaden maa tilregnes Afladeren eller Ladningsmodtageren i hans Egenskab som saadan.

eller tagen kändedom om fartygets beskaffenhet, uttryckligen godkänt detsamma såsom sjövärdigt för viss fara, ege han ej att, vid inträffad skada, vägra ersättning på grund af fartygets bristande sjövärdighet, med mindre han visar, att denna brist vid försäkringens avslutande varit försäkringstagaren bekant och af honom fördolt.

250. Er almindeligt Havari opgjort paa behørigt Sted i Overensstemmelse med der gjældende Lov, har Forsikreren i Henhold til Fordelingen at tilsvare saavel det Havaribidrag, der falder paa den forsikrede Gjenstand, som de Bidrag til Erstatning af Skade paa den

det försäkrade föremålet skall utgå ersättning till tredje man för skada, som tillfogats denne, i annat fall, än när skadan uppkommit genom fartygs sammanstötning;

2. Vid försäkring af fartyg — skada å fartyget eller dess tillbehör, hvilken är en följd endast af slitning, ålder eller åverkan af mask, eller som härleder sig deraf att den skadade delen vid resans början icke varit i fullgodt skick;

3. Vid försäkring af frakt, last eller förmodad vinst å gods — skada, som härrör af godsets bristfälliga inpackning eller dess egen beskaffenhet, som i 142 § sägs; dock vare försäkringsgifvaren skyldig att ersätta dylik skada, der resan blifvit genom olyckshändelse, för hvilken han ansvarar, ovanligt länge fördröjd, så vida icke antagas må, att skadan icke är en följd af uppehållet;

4. Vid försäkring af last eller förmodad vinst å gods eller af fraktförskott, som ej i händelse af olycka skall återbäras, — skada, som uppstår genom vållande af aflastare eller lastemottagare i sådan egenskap.

Har, vid försäkring af fartyg eller frakt, försäkringsgifvare,

eller tagen kändedom om fartygets beskaffenhet, uttryckligen godkänt detsamma såsom sjövärdigt för viss fara, ege han ej att, vid inträffad skada, vägra ersättning på grund af fartygets bristande sjövärdighet, med mindre han visar, att denna brist vid försäkringens avslutande varit försäkringstagaren bekant och af honom fördolt.

250. Har utredning af gemensamt haveri egt rum å vederbörlig ort i öfverensstämmelse med der gällande lag, vare försäkringsgifvaren pliktig att enligt utredningen ersätta ej mindre de bidrag, som af försäkradt föremål skola utgå, än äfven de bidrag, som för skada

## Danish Text.

fact that a third party on account of loss, sustained through fault or neglect in the service on the part of the master or the crew, seizes the ship, cargo etc. insured, with the exception, however, of compensation for damage occasioned by collision;

2. When the insurance is effected on ship, and the damage to the ship or its appurtenances only is a consequence of wear and tear, age, decay or worms, or is occasioned by the damaged portion having not at the commencement of the voyage been in a proper condition;

3. When the insurance is taken on freight, cargo, or expected profit on the cargo, and the damage is the consequence of unsatisfactory packing, or the special character of the goods as mentioned in § 142; the underwriter shall, however, be liable to make good the last mentioned damage, if the voyage has been unusually delayed on account of any accident which comes under the risk of the underwriter, unless it may be supposed that the damage is not a consequence of the delay;

4. When the insurance is effected on cargo or expected profit on the cargo, or on advance of freight, which is not to be repaid in case of accident, provided that the damage may be attributed to the shipper or receiver of the cargo in their respective capacities as such.

## Norwegian Text.

for loss sustained by him in consequence of the fault or neglect of the master or the crew in the performance of their service, with the exception, however, of compensation for loss caused by a collision;

2. When a ship is insured, and the damage to the ship or its apparel results only from wear and tear, age, decay, or worms, or from the fact that the damaged part has not been in a serviceable condition at the commencement of the voyage;

3. When freight, cargo or trade profits on cargo are insured, and the loss arises from the defective packing of the goods, or from their being of the nature described in § 142. The insurer shall, however, make good even such loss, if the voyage has been extraordinarily protracted on account of an accident covered by the risk of the insurer, unless it must be assumed that the loss has not been caused by the delay;

4. When cargo, or trade profits on cargo, or advance of freight which is not to be reimbursed in the event of an accident, is insured, and the loss is attributable to the shipper or receiver of the cargo in his capacity as such.

## Swedish Text.

sequence of the interest, security, article or other object of insurance having to pay compensation to a third party for any damage suffered by such party, save and except when the damage is caused by collision;

2. When the insurance is taken on a ship: for any damage to ship or appurtenances, which is only a consequence of wear and tear, age or worms, or which is the consequence of the portion of the ship or her appurtenances which has suffered damage, not having been in perfect condition at the commencement of the voyage;

3. When the insurance is taken in respect of freight, cargo or expected profit on goods: for any damage emanating from insufficient packing or the special character of the goods as mentioned in Art. 142; the underwriters, however, to be liable to make good such damage, if the voyage has been unusually delayed on account of any accident caused by them, unless it may be supposed that the damage is not a consequence of such delay;

4. When the insurance is taken on cargo, or expected profit on goods, or advance on freight, not repayable in case of accident: for any damage caused by any fault or neglect on the part of shippers or consignees in their respective capacities. If, when an insurance is taken on ship or freight, the

underwriters have duly ascertained the condition of the ship and have expressly approved of her sea-worthiness as regards a certain danger, they shall have no right, in case of accident, to refuse payment on the strength of the ship's unseaworthiness, unless it can be proved that any such deficiency was known to the party insured at the time of making the agreement and was kept a secret.

250. If an adjustment of general average has been made at the proper place in accordance with the Laws of such place, the underwriter shall, pursuant to the apportionment, be bound to contribute such amount towards the average, as is to be borne by the

250. If a general average has been settled at the proper place, and in accordance with the law in force at such place, the insurer shall pay, according to the settlement, both the average contribution falling to the thing insured, and the contribution towards

250. If an adjustment of general average has been made at the proper place in accordance with the laws of such place, the underwriters shall be bound, not only to compensate the proportion to be borne by the security, interest, article or other object of in-

## Dansk Text.

forsikrede Genstand, der paa hvile andre Deltagere i Havariet, men som bevislig ikke have kunnet erholdes hos de bidragpligtige. Denne Forpligtelse gælder, uanset om den forsikrede Genstand i Havarifordelingen er ansat til højere Beløb end Forsikringsværdien.

## Norsk Text.

forsikrede Gjenstand, der paa hviler andre Deltagere i Havariet, men som bevislig ikke har kunnet erholdes hos de Bidragspligtige. Denne Forpligtelse gjælder, uanset om den forsikrede Gjenstand i Havarifordelingen er ansat til høiere Beløb end Forsikringsværdien.

## Svensk text.

å samma föremål skola af annan deltagare i haveriet utgöras, så vida försäkringstagaren visar, att han ej kunnat samma bidrag utfå. Denna skyldighet åligger försäkringsgifvaren, äfven om det försäkrade föremålet blifvit i haveriutredningen åsatt högre värde än försäkringsvärdet.

Har Fordelingen af Havariet ikke fundet Sted, og den forsikrede ikke selv er Skyld deri, kan han fordre Erstatning for hele Skaden efter Forsikringskontraktens Indhold.

Har Fordeling af Havariet ikke fundet Sted, og den Forsikrede ikke selv er Skyld deri, kan han fordre Erstatning for hele Skaden efter Forsikringskontraktens Indhold.

Har utan försäkringstagarens vållande utredning af haveriet uteblifvit, ege försäkringstagaren fordra ersättning för hela skadan enligt försäkringsaftalens innehåll.

251. Er Havariet opgjort paa rette Sted og af nogen, som der har offentlig Bemyndigelse til at udføre saadanne Forretninger, kan Forsikreren ikke overfor den forsikrede paabe- raabe sig, at en anden ved Dis- pachen er bleven begunstiget til Skade for den forsikrede i Strid med Loven paa det Sted, hvor Havariet er opgjort, saa- fremt ikke den forsikrede selv har været Skyld i, at hans Ret ikke tilbørlig er varetaget. Den forsikrede er dog pligtig at over- drage Forsikreren sin Fordring paa de saaledes begunstigede.

251. Er Havariet opgjort paa rette Sted og af Nogen, som der har offentlig Bemyndigelse til at udføre saadanne Forret- ninger, kan Forsikreren ikke overfor den Forsikrede paabe- raabe sig, at en anden ved Dis- pachen er bleven begunstigt til Skade for den Forsikrede i Strid med Loven paa det Sted, hvor Havariet er opgjort, saafremt ikke den Forsikrede selv har været Skyld i, at hans Ret ikke tilbørlig er varetaget. Den For- sikrede er dog pligtig til at over- drage Forsikreren sin Fordring paa de saaledes Begunstigede.

251. Är utredning af gemen- samt haveri upprättad af be- hörig person å vederbörlig ort, ege försäkringsgifvaren ej mot försäkringstagaren åberopa, att vid utredningen någon blifvit, mot den å utredningsorten gäl- lande lag, på försäkringstaga- rens bekostnad gynnad, så vida ieke försäkringstagaren sjelf vållat, att hans rätt ieke be- hörigen iakttagits; dock vare försäkringstagaren pligtig att till försäkringsgifvaren afstå sina anspråk mot den, hvilken sålunda gynnats.

252. Udgifter og Opofrelser, som i god Tro ere gjorte for at afvende Fare, hvorfor Forsik- reren er ansvarlig, eller efter indtruffen Skade for at bjerpe og bevare forsikret Genstand og afværge større Skade, er For- sikreren forpligtet til at erstatte, selv om de ikke kunne henreg- nes til almindeligt Havari, og ligesaa Omkostninger, der med- gaar til at faa Forsikrerens An- svar bestemt i Tilfælde som nævnt.

252. Udgifter og Opofrelser, som i god Tro er gjorte for at afvende Fare, hvorfor Forsik- reren er ansvarlig, eller efter indtruffen Skade for at berge og bevare forsikret Gjenstand og afværge større Skade, er Forsikreren forpligtet til at er- statte, selv om de ikke kan hen- regnes til almindeligt Havari, og ligesaa Omkostninger, der medgaar til at faa Forsikrerens Ansvar bestemt i Tilfælde som nævnt.

252. Kostnad och uphoff- ring, som i god tro blifvit gjorda för att från försäkradt föremål afvända fara, för hvilken för- säkringsgifvaren svarar, eller för att efter timad skada berga eller bevara försäkradt föremål eller eljest till förekommande af ytterligare skada, vare för- säkringsgifvaren skyldig att er- sätta, ändå att de ej äro att hänföra till gemensamt haveri, så ock kostnad för bestämman- de af försäkringsgifvarens ersättningskyldighet i dylikt fall.

253. Indtraffer Havari flere Gange i den Tid, Forsikrerens Risiko varer, har han at erstatte Skaden, selv om Erstatnings- summerne tilsammen overstige Forsikringssummen. De i § 252 omhandlede Udgifter

253. Indtraffer Havari flere Gange i den Tid, Forsikrerens Risiko varer, har han at erstatte Skaden, selv om Erstatnings- summerne tilsammen overstiger Forsikringssummen. De i § 252 omhandlede Udgifter bliver og-

253. Har under den tid, för- säkringsgifvarens fara varar, haveri flere gånger inträffat, er- sätte försäkringsgifvaren skad- an, ändå att ersättningsbelop- pen sammanlagda öfverstiga försäkringssumman. De i 252 §

## Danish Text.

insured object, as well as those contributions to compensation for damage sustained by the object of insurance which are to be paid by other partakers of the average, provided that it is proved that it has not been possible to get them from those bound to contribute. This liability is incurred even if the object of insurance in the average adjustment has been rated to a higher amount than the insurance value.

If no apportionment of the average has taken place, and such omission is not the fault of the party insured, the said party can demand compensation for the whole damage, in accordance with the contents of the insurance agreement.

**251.** If the average has been adjusted at the proper place by any person authorized by the Government to undertake this office, the underwriter cannot, against the insured party, plead that another person, contrary to the Laws in force at the place of adjustment, has been favoured by the adjustment at the expense of the party insured, unless it be the fault of the latter party himself that his rights have not been properly looked after. The party insured shall, however, be bound to give up his rights against the persons thus favoured to the underwriter.

**252.** The underwriter is bound to compensate any sacrifice and expense incurred in good faith in order to avert danger for which he is responsible, or, after the damage has been sustained, in order to save and preserve an insured object and to prevent any further damage, even if the said expenses and sacrifices cannot be considered as general average; as well as any cost incurred in determining the liability of the underwriter in cases as afore-mentioned.

**253.** If average occurs several times in the period during which the risk of the underwriter lasts, he must make good the damage, even if the total amount of compensation exceeds the amount of insur-

## Norwegian Text.

compensation for the loss on the insured thing which other participators in the average are bound to make good, but which clearly has not been recoverable from them. This liability shall operate, whether the thing insured has been estimated in the average settlement at a higher amount than the insurance value, or not.

If the distribution of the average has not taken place, the insured may, if such omission is not caused by his fault, demand compensation for the whole loss according to the terms of the insurance contract.

**251.** If the average has been adjusted at the proper place by a person having official authority to perform such acts, the insurer cannot deny the claim of the insured on the plea that a third person has been favoured by the average adjustment to the prejudice of the insured, contrary to the law in force at the place where the average has been adjusted, provided the insured has not, himself, been the cause of his right not being properly protected. It shall, however, be incumbent on the insured to assign his claim on the persons thus favoured, to the insurer.

**252.** Expenses incurred, and sacrifices made, bona fide, for the purpose of averting a danger for which the insurer is liable, or for saving and preserving a thing insured, and averting further damage after a loss, shall be compensated by the insurer, even when not under general average. The same rule shall apply to expenses incurred in ascertaining the liability of the insurer in such cases.

**253.** Should general average occur several times during such time as the risk undertaken by the insurer exists, he shall make good the loss even if the total amount of compensation exceeds the amount of insur-

## Swedish Text.

surance, but also any proportion of damage in connection therewith which is to be paid by any other participator in the average, provided the party insured proves that he has not been able to recover such proportion. The aforesaid liability is also incurred by the underwriters, even if the security, interest, article or other object of insurance should have been appraised higher in the average adjustment than the insurance value.

If no adjustment of average has taken place, and such omission is not the fault of the party insured, the said party shall have the right to claim compensation for the full damage in accordance with the contents of the insurance agreement.

**251.** If the average is adjusted by the proper person at the proper place, the underwriters cannot plead against the party insured that any person, contrary to the laws in force at the place of adjustment, has been favoured at the expense of the party insured, unless the latter party is himself to blame that his rights have not been properly looked after; the party insured shall, however, be obliged to give up his rights against the person thus favoured to the underwriters.

**252.** Any sacrifice or expense incurred in good faith, in order to protect the interest, security, article or other object insured against any danger, for which the underwriters are responsible, or in order to save and preserve any interest, security, article or other object insured, subsequent to damage, or otherwise in order to prevent further damage, shall have to be paid by the underwriters, although not coming under general average, as also any expense incurred in determining the liability of the underwriters in a similar case.

**253.** If several averages have occurred during the continuation of the danger covered by the underwriters, they shall make good the damage, although the total compensation amount exceeds the insurance

blive ogsaa fuldt ud at erstatte, selv om Forsikringssummen derved overskrides.

254. Forandres den ved Forsikringens Afslutning opgivne Rejse, inden Forsikrerens Risiko er begyndt, bortfalder ved Forsikring af Skib eller af Fragt for Rederens Regning al Forpligtelse for Forsikrerens; ved Forsikring af Fragt for andens Regning eller af andre Genstande end Skib og Fragt vedbliver Forsikringen at være gældende, naar Rejsen er bleven forandret uden den forsikredes Samtykke.

Udsættes forsikret Gods, forinden Forsikrerens Risiko er begyndt, for Fare med et andet Skib end det ved Forsikringen opgivne, bliver Forsikrerens fri for sin Forpligtelse.

255. Forandres Rejsen, eller forøges eller forandres paa anden Maade den Fare, mod hvilken der er forsikret, efter at Forsikrerens Risiko er begyndt, er denne fri for Ansvar for enhver Ulykke, der finder Sted efter Forandringen, medmindre denne er sket uden den forsikredes Samtykke eller i Nodstilfælde, foranlediget ved en Fare, for hvilken Forsikrerens er ansvarlig, eller den er sket for at redde Menneskeliv.

#### Fjerde Afsnit.

#### Om Skaden og dens Betaling.

256. Den forsikrede har Ret til Erstatning for Totalskade:

1. Ved Forsikring af Skib eller Gods, naar Skibet eller Godset er gaaet helt til Grunde eller prisdømmes eller saaledes beskadiges, at det maa ansees for odelagt i Væsen og Brugbarhed;
2. Ved Forsikring af Fragt, naar Fragten helt er tabt;
3. Ved Forsikring af Handelsfordel eller Provision, naar

saa fuldt ud at erstatte, selv om Forsikringssummen derved overskrides.

254. Forandres den ved Forsikringens Afslutning opgivne Reise, inden Forsikrerens Risiko er begyndt, bortfalder ved Forsikring af Skib eller Fragt for Redernes Regning al Forpligtelse for Forsikrerens; ved Forsikring af Fragt for Andens Regning eller af andre Gjenstande end Skib og Fragt vedbliver Forsikringen at være gjældende, naar Reisen er bleven forandret uden den Forsikredes Samtykke.

Udsættes forsikret Gods, forinden Forsikrerens Risiko er begyndt, for Fare med et andet Skib end det ved Forsikringen opgivne, bliver Forsikrerens fri for sin Forpligtelse.

255. Forandres Reisen, eller forøges eller forandres paa anden Maade den Fare, mod hvilken der er forsikret, efterat Forsikrerens Risiko er begyndt, er denne fri for Ansvar for enhver Ulykke, der finder Sted efter Forandringen, medmindre denne er sket uden den Forsikredes Samtykke eller i Nodstilfælde, foranlediget ved en Fare, for hvilken Forsikrerens er ansvarlig, eller den er sket for at redde Menneskeliv.

#### Fjerde Afsnit.

#### Om Skaden og dens Betaling.

256. Den Forsikrede har Ret til Erstatning for Totalskade:

1. Ved Forsikring af Skib eller Gods, naar Skibet eller Godset er gaaet helt tilgrunde eller prisdømmes eller saaledes beskadiges, at det maa ansees for odelagt i Væsen og Brugbarhed;
2. Ved Forsikring af Fragt, naar Fragten er helt tabt;
3. Ved Forsikring af Handelsfordel eller Provision, naar

omförmälda utgifter skola ock fullt ut godtgöras, ända att försäkringssumman öfverskrides.

254. Förändras den vid försäkringen uppgifna resa innan försäkringsgifvarens fara begynt, då vare, vid försäkring af fartyg eller af frakt för redarens räkning, försäkringsgifvaren fri från sin ansvarighet; vid försäkring af frakt för annans räkning eller af annat föremål än fartyg eller frakt vare försäkringen ändock gällande, der resans förändring egt rum utan försäkringstagarens begifvande.

Utsättes försäkradt gods, innan försäkringsgifvarens fara börjat, för fara med annat fartyg än det vid försäkringens afslutande uppgifna, vare försäkringsgifvaren fri från sin ansvarighet.

255. Har, efter det försäkringsgifvarens fara begynt, resan ändrats eller faran annorledes förändrats eller förökats, vare försäkringsgifvaren fri från ansvarighet för hvarje efter förändringen timad olycka, så vida icke farans förändring eller förökande egt rum utan försäkringstagarens begifvande eller till följd af nödfall, föränlett af en fara, för hvilken försäkringsgifvaren svarar, eller ock för att rädda människolif.

#### IV.

#### Om skadan och dess betalning.

256. Försäkringstagaren eger rätt att erhålla ersättning för total förlust:

1. Vid försäkring af fartyg eller gods — när fartyget eller godset gått helt och hållet förlorat eller förklarats för god pris eller blifvit så skadadt, att det icke vidare kan för sitt ursprungliga ändamål användas;
2. Vid försäkring af frakt — när frakten gått helt och hållet förlorat;
3. Vid försäkring af förmodad vinst och provision å gods



## Danish Text.

ance. The expenses mentioned in § 252 shall also be made good in full, although the insurance amount is thereby exceeded.

254. If the voyage, as stated at the time of effecting the insurance, is changed before the risk of the underwriter has commenced, the latter shall be free from responsibility in case of insurance of ship or freight on behalf of the owners; in case of insurance of freight on behalf of another, or of anything else than ship and freight, the insurance remains in force, should the voyage have been changed without the consent of the party insured.

If any property insured, previous to the commencement of the risk of the underwriter, is exposed to danger in any other ship than that stated at the time of effecting the insurance, the underwriter shall be free from his obligation.

255. If the voyage has been altered, or the danger against which the insurance has been effected, has increased or otherwise been changed after the risk of the underwriter has begun, the latter is free from responsibility for any accident subsequent to such change, unless the change or increase of the danger has taken place without the consent of the insured, or in an emergency, caused by any danger for which the underwriter is answerable, or in order to save human life.

## IV.

## Respecting the damage and its payment.

256. The party insured shall be entitled to compensation for total loss in the following cases:

1. In the case of ship or cargo being insured: when the ship or cargo has been altogether lost or condemned, or been damaged to such a degree that it may be considered as quite ruined and unfit for use;
2. In the case of freight: when the freight has been lost altogether;
3. In the case of expected profit or commission: when

## Norwegian Text.

ance. The expenses referred to in § 252 shall also be made good in full, even if the amount of insurance be thereby exceeded.

254. If the voyage stated on concluding the insurance is altered before the commencement of the risk of the insurer, the insurer shall, in the event of insurance having been effected on a ship or freight for the account of the owners, be entirely released from his responsibility; in the event of insurance having been effected on freight for the account of a third person, or on other things than ship or freight, the insurance shall remain in force when the voyage has been altered without the consent of the insured.

If, before the risk of the insurer commences, property insured is exposed to any risk in any other ship than the one stated on effecting the insurance, the insurer shall be released from his liability.

255. If the voyage is altered, or if in some other manner the risk, against which the insurance has been effected, is increased or altered after the commencement of the risk of the insurer, he shall be released from his responsibility for any loss sustained after the alteration, unless such alteration has been made without the consent of the insured, or through necessity caused by a danger for which the insurer is liable, or in order to save human life.

## Part IV.

## The loss and its payment.

256. The insured is entitled to compensation for a total loss, that is to say:

1. When ship and goods are insured, and the ship and goods have been entirely lost, or condemned as a prize, or damaged to such an extent that they must be considered as destroyed in substance and unfitted for use;
2. When freight is insured, and the freight is entirely lost;
3. When trade profit or commission is insured, and the

## Swedish Text.

amount. The expenses referred to in Art. 225 shall also be made good in full, although the insurance amount is thereby exceeded.

254. If the voyage, as stated at the time of taking the insurance, is altered before any danger covered by the underwriters has commenced, the latter shall be free from responsibility in case of insurance of ship or of freight for account of the owners. In the case of insurance of freight for account of a person other than the owners of the ship, or of anything else than ship or freight, the insurance shall nevertheless remain in force should the alteration of the voyage have been made without the consent of the party insured.

If any property insured is, previous to the commencement of the danger covered by the underwriters, exposed to danger in any other ship than stated at the time of taking the insurance, the underwriters shall be free from responsibility.

255. If the voyage has been altered, or the danger otherwise been changed or increased, subsequent to the commencement of the danger covered by the underwriters, they shall be free from responsibility in respect of any accident subsequent to such change, unless the change or increase of the danger has taken place without the consent of the party insured, or owing to emergency caused by any danger for which the underwriters are responsible or for the saving of lives.

## IV.

## The loss and its payment.

256. The party insured shall have the right to obtain compensation for total loss in the following cases (that is to say):

1. In the case of ship or cargo being insured: when the ship or cargo has been altogether lost, or been declared a good prize, or has been so damaged that it can no more be used for the purpose intended;
2. In the case of freight: when the freight has been lost altogether;
3. In the case of expected profit, or commission on

Varerne ikke komme frem til Bestemmelsesstedet;

4. Ved Forsikring af Havari- eller Bodmeripenge, naar Søpantet, som hæfter for dem, er gaaet helt tabt eller intet yder til deres Dækning.

257. I Tilfælde af Totalskade har Forsikreren at udbetale den hele Forsikringssum, dog med Afkortning af, hvad der spares paa Udgifter, som ere indbefattede under Forsikringen, og med Ret for Forsikreren til at overtage, hvad der maatte bjerger. Er Genstanden kun forsikret for en Del af sin Værdi, beregnes Afkortningen efter Forholdet mellem Forsikringssummen og hele Forsikringsværdien, og Forsikreren faar Andel i det bjergede efter samme Forhold.

Naar forsikret Skib lider Skade og ved lovlig Besigtigelse erklæres for uistandssetteligt, er den forsikrede berettiget til at fordræ Erstatning som for Totalskade mod at afstaa Skibet til Forsikreren.

258. Naar der har manglet Efterretning om et Skib i tre Gange saa lang Tid, som der gennemsnitlig medgaar til et Sejlskibs Rejse fra det Sted, fra hvilket den sidste Efterretning havdes om Skibet, til Bestemmelsesstedet, dog mindst 3 Maaneder, anses Skibet for tabt, og den forsikrede kan mod at afstaa sin Ret til den forsikrede Genstand fordræ Erstatning for Totalskade.

259. Naar Skib eller Gods belægges med Embargo eller paa anden Maade tilbageholdes ved nogen Foranstaltning af offentlig Myndighed eller tages af Sjørovere, eller naar forsikret Skib forlades af Besætningen, kan den forsikrede fordræ Erstatning som for Totalskade mod at afstaa sin Ret til den forsikrede Genstand, saafremt Skib

Varerne ikke kommer frem til Bestemmelsesstedet;

4. Ved Forsikring af Havari- eller Bodmeripenge, naar Søpantet, som hæfter for dem, er gaaet helt tabt eller intet yder til deres Dækning.

257. I Tilfælde af Totalskade har Forsikreren at udbetale den hele Forsikringssum, dog med Afkortning af, hvad der spares paa Udgifter, som er indbefattede under Forsikringen, og med Ret for Forsikreren til at overtage, hvad der maatte bjerger. Er Genstanden kun forsikret for en Del af sin Værdi, beregnes Afkortningen efter Forholdet mellem Forsikringssummen og hele Forsikringsværdien, og Forsikreren faar Andel i det Bergede efter samme Forhold.

Naar et forsikret Skib lider Skade og ved lovlig Besigtigelse erklæres for uistandssetteligt, er den Forsikrede berettiget til at fordræ Erstatning som for Totalskade mod at afstaa Skibet til Forsikreren.

258. Naar der har manglet Efterretning om et Skib i tre Gange saa lang Tid, som der gennemsnitlig medgaar til et Sejlskibs Rejse fra det Sted, fra hvilket den sidste Efterretning havdes om Skibet, til Bestemmelsesstedet, dog mindst 3 Maaneder, anses Skibet for tabt, og den Forsikrede kan mod at afstaa sin Ret til den forsikrede Genstand fordræ Erstatning for Totalskade.

259. Naar Skib eller Gods belægges med Embargo eller paa anden Maade tilbageholdes ved nogen Foranstaltning af offentlig Myndighed eller tages af Sjørovere, eller naar forsikret Skib forlades af Besætningen, kan den Forsikrede fordræ Erstatning som for Totalskade mod at afstaa sin Ret til den forsikrede Genstand, saafremt

— när godset icke framkommer till bestämmelseorten; och

4. Vid försäkring af haveripeningar och bodmerifordran — när det föremål, som för fordringen häftar, gått helt och hållet förloradt eller eljest icke lemnar någon tillgång till fordringens gäldande.

257. Vid total förlust gälde försäkringsgifvaren hela försäkringssumman, med afdrag af det belopp, som motsvarar hvad till följd af olyckshändelsen varder försäkringstagaren besparadt å de under försäkringen innefattade utgifter, och med rätt för försäkringsgifvaren att öfvertaga det, som må hafva bergats. Var ej hela värdet försäkradt, skall afdraget ske efter förhållandet mellan försäkringssumman och hela försäkringsvärdet samt försäkringsgifvaren erhålla andel i det bergade efter samma förbållande.

Har försäkradt fartyg, som lidit skada, blifvit efter vederbörlig besigtning förklaradt icke vara istandsättligt eller har skadan vid besigtningen funnits uppgå till tre fjerdedelar af försäkringsvärdet, ege försäkringstagaren rätt att, mot fartygets afträdande till försäkringsgifvaren, fordræ ersättning för total förlust.

258. Har all underrättelse om fartyg uteblifvit under tre gånger så lång tid, som kan antagas i allmänhet erfordras för ett segelfartygs resa från den ort, der fartyget sist afhördes, till bestämmelseorten, dock under minst tre månader; då må fartyget anses förloradt och försäkringstagaren ega att, mot afstående af sin rätt till det försäkrade föremålet, fordra ersättning såsom för total förlust.

259. Har fartyg eller gods blifvit lagdt under embargo eller anhållet genom annan åtgärd af högre hand eller tagits af sjöröfvare, eller har fartyg öfvergifvits af besättningen; då ege försäkringstagaren rätt att, mot afträdande af det försäkrade föremålet, fordra ersättning såsom för total förlust, så vida fartyget eller godset icke

## Danish Text.

the goods never reach their destination;

4. In the case of insurance of average- or bottomry-money: when the object pledged for such claim (cfr. §§ 268, 276) has been altogether lost or otherwise does not yield anything to meet the claim.

257. In case of total loss, the underwriter has to pay the full insurance sum, less the amount corresponding to the saving in the expenses included in the insurance, and with a right for the underwriter to take possession of what may be saved. If the object of insurance has only been insured for a part of its value, the deduction is to be calculated according to the proportion between the insurance sum and the whole insurance value, and the underwriter receives a share in the saved property in the same proportion.

If an insured ship sustains damage and by legal survey is declared irreparable, the insured party has a right to claim compensation as for total loss in consideration of the ship being ceded to the underwriter.

258. If no information regarding a ship has been received for three times the length of the period usually required by a sailing ship to perform the voyage from the place where the vessel was last heard of, to the port of destination, not less, however, than three months, the ship is considered as lost, and the insured can claim compensation as for total loss on resigning his right to the insured object.

259. If any ship or cargo has been placed under embargo, or is otherwise detained by any act of the authorities, or taken by pirates, or if the ship insured has been abandoned by its crew, the party insured can claim compensation as for total loss on resigning his right to the object of insurance, provided that the ship or cargo

## Norwegian Text.

goods do not arrive at their destination;

4. When average or bottomry claims are insured, and the pledge under a maritime lien by which they were secured has been entirely lost, or yields nothing wherewith to cover the claims.

257. In the event of a total loss, the insurer shall pay the whole amount of insurance less what is saved from expenses included in the insurance, and the insurer shall be entitled to take over whatever may have been saved. If the thing has only been insured for a part of its value, the deduction shall be computed according to the proportion the amount insured bears to the entire insurance value, and the insurer shall have a share of the property saved, calculated in the same proportion.

When an insured ship suffers damage, and, at a survey according to law, is declared unfit for repair, the insured shall be entitled to claim compensation as for a total loss, on transferring the ship to the insurer.

258. When no report has been received of a ship for three times the time ordinarily required for the voyage of a sailing ship from the place whence the last news of the ship had been received to its destination, though in no case under three months, the ship shall be considered as lost, and the insured entitled to claim compensation for a total loss on assigning his right to the thing insured to the insurer.

259. When ship or goods are put under embargo, or otherwise detained by any measures of the Authorities, or taken by pirates, or when an insured ship is deserted by the crew, the insured shall be entitled to claim compensation as for a total loss on assigning his right to the thing insured, provided the ship or

## Swedish Text.

goods; when the goods never reach their port of destination;

4. In the case of average disbursements and bottomry claim: when the interest, security, article or other object pledged for such claim has been altogether lost, or otherwise cannot satisfy the claim.

257. In the case of total loss the underwriters shall pay the full insurance amount, less the amount corresponding to the saving in the expenses, included in the insurance, which, on account of the accident, may be spared the party insured; the underwriters to be entitled to take over the saved property. If not insured up to the full value, the deduction is to be made in the ratio which the insurance amount bears to the full insurance value; the underwriters to partake in the property saved in the same proportion.

If an insured ship, which has suffered damage, is declared a constructive total loss after proper survey has been made, or should, on surveying the ship, the damage be found to amount to three fourths of the insurance value, the party insured shall have the right to claim compensation as for total loss, in consideration of the ship being ceded to the underwriters.

258. If no information regarding a ship has been received for three times the length of the period usually supposed to be required for a sailing ship for a voyage from the place where the vessel was last heard of to the port of destination, not less however than three months, then the ship may be considered as lost, and the party insured shall be entitled to claim compensation as for total loss, if he resigns his rights to the insured value, interest, article or other object.

259. If any ship or cargo has been placed under embargo, or detained by any other act of rulers or princes, or taken by pirates, or if the ship has been abandoned by the crew, the party insured shall have the right to claim compensation as for total loss, if he cedes the insured value, interest, article or other object of insurance.

eller Ladning ikke igen er bleven frigivet eller kommet i den forsikredes Raadighed;

Skib eller Ladning ikke igjen er bleven frigivet eller kommet i den Forsikredes Raadighed;

blifvit frigifvet eller stäldt till försäkringstagarens förfogande

inden 6 Maaneder, hvis den nævnte Begivenhed har fundet Sted i europæiske Farvande, eller i en inden for Europa liggende Del af Middelhavet, det sorte eller det azovske Hav;

inden 9 Maaneder, hvis den har fundet Sted i andre Farvande paa denne Side af det gode Haabs Forbjerg eller Kap Horn, og

inden 12 Maaneder, hvis den har fundet Sted i Farvande paa den anden Side af det gode Haabs Forbjerg eller Kap Horn

De nævnte Tidsrum regnes fra den Dag, da Underretning om Ulykken er meddelt Forsikreren af den forsikrede.

inden 6 Maaneder, hvis den nævnte Begivenhed har fundet Sted i europæiske Farvande eller i en udenfor Europa liggende Del af Middelhavet, det sorte eller det azovske Hav;

inden 9 Maaneder, hvis den har fundet Sted i andre Farvande paa denne Side af det gode Haabs Forbjerg eller Kap Horn, og

inden 12 Maaneder, hvis den har fundet Sted i Farvande paa den anden Side af det gode Haabs Forbjerg eller Kap Horn

De nævnte Tidsrum regnes fra den Dag, da Underretning om Ulykken er meddelt Forsikreren af den forsikrede.

inom sex månader, om uppbringningen eller öfvergifvandet skett i europeiskt farvatten eller i en utom Europa belägen del af Medelhafvet, Svarta hafvet eller Azovska sjön;

inom nio månader, om det skett i annat farvatten, beläget på denna sidan Goda Hoppsudden eller Kap Horn; och

inom tolf månader, om det skett i farvatten på andra sidan Goda Hoppsudden eller Kap Horn.

De ofvan angifna tider räknas från den dag, då försäkringstagaren underrättat försäkringsgifvaren om olyckan.

260. Vil den forsikrede afstaa den forsikrede Genstand, skal han underrette Forsikreren derom, i det i § 257, sidste Stykke, omhandlede Tilfælde inden 1 Maaned, efter at han er bleven bekendt med Besigtigelsens Udfald, og i de i §§ 258 og 259 omhandlede Tilfælde inden 6 Maaneder efter Udlobet af den i disse Paragraffer for hvert enkelt Tilfælde fastsatte Tidsfrist.

260. Vil den Forsikrede afstaa den forsikrede Gjenstand, skal han underrette Forsikreren derom i det i § 257, sidste Stykke omhandlede Tilfælde inden 1 Maaned, efterat han er bleven bekendt med Besigtelsens Udfald, og i de i §§ 258 og 259 omhandlede Tilfælde inden 6 Maaneder efter Udlobet af den i disse Paragrafer for hvert enkelt Tilfælde fastsatte Tidsfrist.

260. Vill försäkringstagare afträda försäkradt föremål, gifve han försäkringsgifvaren det till kända i det fall, 257 § andra stycket omförmäler, inom en månad efter erhållen kännedom af besigtningen och i de fall, som omförmälas i 258 och 259 §§, inom sex månader efter utgången af den der för hvarje särskildt fall utsatta tid.

261. Er den i foregaaende Paragraf nævnte Frist udløbet, uden at den forsikrede har benyttet sin Ret til at afstaa den forsikrede Genstand, ophører i de Tilfælde, der omhandles i § 257, 2det Stykke, og i § 259, hans Berettigelse dertil.

261. Er den i foregaaende Paragraf nævnte Frist udløbet, uden at den Forsikrede har benyttet sin Ret til at afstaa den forsikrede Gjenstand, ophører i det Tilfælde, der omhandles i § 257, andet Stykke, hans Berettigelse dertil.

261. Har den i föregående § stadgade tid förflytit utan att försäkringstagaren begagnat sin rätt att afträda det försäkrade föremålet, vare han i det fall, 257 § andra stycket omförmäler, samma rätt förlustig.

I det i § 258 omhandlede Tilfælde kan han, selv efter Afstaaelsesfristens Udløb, fordræ Erstatning som for Totalskade, men hvis den forsikrede Genstand senere kommer til Stede, har han paa Forsikrerens Forlangende at tilbagebetale Forsikringssummen med  $\frac{1}{2}$  pCt. maanedlig Rente, mod at Forsikreren opgiver Retten til den forsikrede Genstand og erstatter den under Forsikringen hørende Skade, som Genstanden maatte have lidt.

I de i §§ 258 og 259 omhandlede Tilfælde kan han, selv efter Afstaaelsesfristens Udløb, fordræ Erstatning som for Totalskade; men hvis den forsikrede Gjenstand senere kommer til stede, har han paa Forsikrerens Forlangende at tilbagebetale Forsikringssummen med  $\frac{1}{2}$  pCt. maanedlig Rente, mod at Forsikreren opgiver Retten til den forsikrede Gjenstand og erstatter den under Forsikringen hørende Skade, som Gjenstanden maatte have lidt.

Har i de fall, 258 och 259 §§ omförmäla, den för afträdande bestämda tid gått till ända, ege försäkringstagaren ändock att fordra ersättning såsom för total förlust, men vare, om det försäkrade föremålet kommer till rätta, frigifves eller ställes till försäkringstagarens förfogande, pligtig att, der försäkringsgifvaren det äskar, återbära försäkringssumman och derå gälda ränta med en half procent i månaden mot skyldighet för försäkringsgifvaren att ersätta den under försäkringen hörande skada, föremålet må hafva lidit.

## Danish Text.

has not been released again, or placed at the disposal of the insured party:

within 6 months, if the said event has taken place in European waters or in any part of the Mediterranean, the Black Sea or the sea of Azov within Europe;

within 9 months, if in other waters on this side of the Cape of Good Hope or Cape Horn, and

within 12 months, if in seas beyond the Cape of Good Hope or Cape Horn.

The terms above mentioned are reckoned from the day when the disaster by the party insured has been notified to the underwriter.

**260.** If the party insured wishes to renounce the object insured, he shall give notice of his intention to the underwriter, in the case mentioned in the last part of § 257 within a month from the date of receiving information of the issue of the survey, and in the cases mentioned in §§ 258 and 259 within 6 months after the expiration of the space of time therein fixed for each separate case.

**261.** If the time stipulated in the preceding paragraph has elapsed without the party insured having availed himself of his right to give up the object insured, his right to do so ceases in the cases mentioned in § 257, 2nd portion, and § 259.

In the case mentioned in § 258 the party insured can, even after the expiration of the term for renouncing, claim compensation as for total loss, but he shall be obliged, if the underwriter should so require, to refund the insurance sum together with one half per cent. monthly interest, should the object of insurance later on re-appear, on condition that the underwriter renounces his right to the said object and compensates any damage, included in the insurance, which the object in question may have sustained.

## Norwegian Text.

cargo have not been released or placed at the disposal of the insured, that is to say:

within 6 months, if the said occurrence has taken place in European waters, or in any part of the Mediterranean, the Black Sea, or the Sea of Azov beyond Europe;

within 9 months, if it has occurred in other waters on this side of the Cape of Good Hope, or Cape Horn; or

within 12 months, if it has occurred in waters on the other side of the Cape of Good Hope or Cape Horn.

The said periods shall be computed from the day when the insurer has received notice of the accident from the insured.

**260.** If the insured wishes to assign the insured thing he shall give notice to the insurer; in the case referred to in the last section of § 257, within 1 month after having received notice of the result of the survey, and in the cases referred to in §§ 258 and 259, within 6 months after the expiry of the periods fixed in the said sections for each different case.

**261.** If the term of grace fixed in the preceding paragraph has expired without the insured having used his right to assign the insured thing, his right to do so shall, in the case referred to in the second section of § 257, become void.

In the cases referred to in §§ 258 and 259, he may, even after the expiry of the period for the cession, demand compensation as for a total loss; but if the thing insured is afterwards forthcoming, he shall, on the demand of the insurer, return the insurance premium together with  $\frac{1}{2}$  per cent., in monthly interest, on condition of the insurer relinquishing his right to the thing insured, and making good the loss sustained by the thing which is covered by the insurance.

## Swedish Text.

provided the ship or cargo has not been released, or placed at the disposal of the party insured, within the following time limits, i. e.:

Six months, if the seizure or abandonment has taken place in any European waters, or in any part of the Mediterranean beyond Europe, or in the Black sea or in the sea of Azov;

Nine months, if in any other waters situated this side of the Cape of Good Hope or Cape Horn; and

Twelve months, if in any waters beyond the Cape of Good Hope or Cape Horn.

The terms above mentioned are to be calculated from the date the accident has been notified to the underwriters by the party insured.

**260.** If the party insured wishes to cede the value, interest, article or other object of insurance, he shall give notice of his intention to the underwriters in the case mentioned in Art. 257 within one month from the date of receiving information regarding the survey, and in the cases referred to in Arts. 258 and 259 within six months subsequent to the expiration of the time therein specified for each separate case.

**261.** If the time stipulated in the preceding Articles has elapsed, and the party insured has failed to avail himself of his right to cede the interest, value, article or other object of insurance, he shall lose his said right in the case referred to in Art. 257 sec. 2.

If in the cases referred to in Arts. 258 and 259, the time stipulated for ceding has elapsed, the party insured shall nevertheless have the right to claim compensation as for total loss, but shall be obliged, if the underwriters should so require, to refund the insurance amount together with one half per cent. monthly interest, should the value, interest, article or other object of insurance reappear, be released, or be placed at the disposal of the party insured, the underwriters to be bound to compensate any damage covered by the insurance, which the said value, interest, article or other object of insurance may have suffered.

## Dansk Text.

262. Afstaaelse af forsikret Genstand skal være ubetinget og uigenkaldelig, hvorhos den maa omfatte hele den forsikrede Genstand eller den Del deraf, som paa den Tid, Ulykken indtraf, var udsat for Fare.

Er Genstanden kun forsikret for en Del af sin Værdi, er den forsikrede kun forpligtet til at afstaa en saa stor Del deraf, som Forsikringssummen udgør af den hele Forsikringsværdi.

263. Naar Forsikringsgodtgørelsen udbetales, kan Forsikreren fordr, at den forsikrede skriftlig overdrager ham de Rettigheder, der som Følge af Afstaaelsen skulle overføres paa Forsikreren, samt at erholde alle den afstaaende Genstand vedkommende Dokumenter, hvoraf den forsikrede er i Besiddelse.

264. Enhver Fordring ifølge Forsikringskontrakt har tabt sin Retskraft, naar den ikke er gjort gjældende ved Sogsmaal inden 5 Aar, efter at den er opstaaet.

## Femte Afsnit.

## Om Tilbagebetaling af Præmie (Ristorno).

265. Naar en forsikret Genstand ikke udsættes for nogen Fare, der falder under Forsikrerens Ansvar, kan den forsikrede fordr, at Forsikringen hæves, og at Præmien tilbagebetales (Ristorno); dog er Forsikreren berettiget til en Godtgørelse, der i Mangel af anden Overenskomst sættes til  $\frac{1}{4}$  pCt. af Forsikringssummen, men til

## Norsk Text.

262. Afstaaelse af forsikret Gjenstand skal være ubetinget og uigenkaldelig, hvorhos den maa omfatte hele den forsikrede Gjenstand eller den Del deraf, som paa den Tid, Ulykken indtraf, var udsat for Fare.

Er Gjenstanden kun forsikret for en Del af sin Værdi, er den Forsikrede kun forpligtet til at afstaa en saa stor Del deraf, som Forsikringssummen udgjør af den hele Forsikringsværdi.

263. Naar Forsikringsgodtgørelsen udbetales, kan Forsikreren fordr, at den Forsikrede skriftlig overdrager ham de Rettigheder, der som Følge af Afstaaelsen skal overføres paa Forsikreren, samt at faa udleveret alle den afstaaende Gjenstand vedkommende Dokumenter, hvoraf den Forsikrede er i Besiddelse.

264. Enhver Fordring ifølge Forsikringskontrakt har tabt sin Retskraft, naar den ikke er gjort gjældende ved Sogsmaal inden tre Aar, efterat den er opstaaet.

## Femte Afsnit.

## Om Tilbagebetaling af Præmie (Ristorno).

265. Naar en forsikret Gjenstand ikke udsættes for nogen Fare, der falder under Forsikrerens Ansvar, kan den Forsikrede fordr, at Forsikringen hæves, og at Præmien tilbagebetales (Ristorno); dog er Forsikreren berettiget til en Godtgørelse, der i Mangel af anden Overenskomst sættes til  $\frac{1}{4}$  pCt. af Forsikringssummen, men til

## Svensk text.

262. Afträdande af försäkradt föremål skall ske utan vilkor eller förbehåll och omfatta hela det försäkrade föremålet eller hvad deraf å den tid, då olyckan inträffade, var utsatt för fara samt må ej återkallas. Var ej hela värdet försäkradt, vare försäkringstagaren skyldig att afträda endast så stor del af det försäkrade föremålet, som motsvarar försäkringssummans förhållande till hela värdet.

263. När försäkringssumman utbetalas, vare försäkringsgifvaren berättigad att af försäkringstagaren erhålla skriftlig öfverlåtelse af de rättigheter, som till följd af afträdandet skola öfvergå till försäkringsgifvaren, äfvensom alla det afträdade föremålet rörande handlingar, af hvilka försäkringstagaren må vara i besittning.

264. Uppstår angående den ersättningsskyldighet, som på grund af försäkringsaftal må åligga försäkringsgifvaren, skall saken hänskjutas till utredande af dispachör. Sådan utredning verkställles, der ej annorlunda

aftalats, å den ort, der försäkringen slutits eller der dispache för den ort vanligen uppgöres. Det åligger dispachören att i tillämpliga delar iakttaga hvad för utredning af gemensamt haveri är i 214 § stadgadt; dock att kungörelse, som der sägs, ej skall utfärdas, der såväl försäkringsgifvare som försäkringstagare förklarar sig icke påkalla sådan; skolande i ty fall dispachen vara upprättad inom två månader efter det fullständiga handlingar inkommit.

Den, som har fordran på grund af försäkringsaftal, skall inom fem år från den dag, då fordringen tillkom, genom stämning eller lagsökning bevaka sin fordran; försummar han det, hafve sin talan mot gäldenären förlorat.

## V.

## Om återbärande af premie (ristorno).

265. Kommer försäkradt föremål icke att utsättas för sådan fara, som faller under försäkringsgifvarens ansvarighet, ege försäkringstagaren fordra, att försäkringen häfves och premien återbäres (ristorno); dock med afdrag, der ej annat aftal skett, af en fjerdedels procent af försäkringssumman eller ock af halfva premien, om

## Danish Text.

**262.** The renunciation of the object insured shall be made without conditions, and shall be irrevocable, and must, besides, comprise the whole object of insurance or the portion thereof which at the time when the accident occurred was exposed to danger.

If the property is not insured up to its full value, the party insured is only bound to renounce as much of it as corresponds to the proportion of the insurance to the full insurance value.

**263.** When the insurance amount is paid, the underwriter can demand that the party insured in writing transfers to him the rights which pursuant to the renouncing shall be transferred to the underwriter, together with all the documents relating to the objects renounced and of which the insured may be in possession.

**264.** Any claim in virtue of an insurance agreement has lost its validity, if not sued for within 5 years from its origin.

## Norwegian Text.

**262.** The surrender of a thing insured shall be unconditional and irrevocable, besides which it must comprise the whole thing insured, or such part thereof as has been exposed to danger at the time the accident occurred.

If the thing has only been insured for part of its value, the insurer shall only be bound to cede so great a part thereof as the insurance sum bears to the entire insurance value.

**263.** When the insurance compensation is paid over, the insurer may insist on the insured assigning to him by an instrument in writing all the rights which, in consequence of the surrender, shall be conveyed to the insurer, and cause all documents in the possession of the insured relating to the thing ceded to be delivered to the insurer.

**264.** All claims under an insurance contract shall be void if not enforced by an action at law within three years after they have originated.

otherwise agreed, at the place where the insurance has been entered into, or where adjustments of average generally are drawn up for such place. It shall be the duty of the average adjuster, whenever practicable, to observe the enactments contained in Art. 214 with regard to adjustments of average. The notice referred to in the said Article shall, however, not be given when both the underwriters and the party insured have declared that they do not call for one. In such case the average adjustment shall be ready within two months subsequent to the receipt of the complete documents.

Any person having a claim on the strength of an insurance agreement, shall safeguard his claim through summons, or the bringing of an action within five years from the date of the origin of the claim; in default he shall have lost his right against the debtor.

## Swedish Text.

**262.** The ceding of any security, interest, article or other object of insurance shall be made without conditions and exceptions, and shall comprise the whole of the security, interest, article or other object of insurance, or whatever thereof may have been exposed to danger at the time when the accident occurred, and may not be revoked. If not insured up to the full value, the party insured shall be obliged only to cede a portion of the security, interest, article or other object of insurance in the ratio which the insurance value bears to the full value.

**263.** When the amount of the insurance is paid, the underwriters shall be entitled to obtain from the party insured a transfer in writing of the rights which, on the strength of the ceding, shall be vested in the underwriters, together with all the documents relating to the ceded security, interest, article or other object of insurance of which the party insured may be in possession.

**264.** If any dispute should arise regarding the liability of the underwriters, on the strength of an insurance agreement, the case shall be referred to an average adjuster. Such adjustment shall be made, unless

## V.

## Regarding the returning of the premium (Ristorno).

**265.** In case an insured object is not exposed to any danger included under the responsibility of the underwriter, the party insured can claim that the insurance be annulled and the premium returned (Ristorno); the underwriter is, however, entitled to a compensation which, in fault of any other agreement, is

## Part V.

## Return of premium.

**265.** When an insured thing is not exposed to any danger coming under the risk of the insurer, the insured may claim to have the insurance annulled and the premium returned (return of premium), the insurer being, however, entitled in such a case to a compensation which, if not otherwise stipulated, shall be fixed at

## V.

## Return of premium.

**265.** If any security, interest, article or other object of insurance should not become exposed to such a danger as is covered by the underwriters, the party insured shall have the right to claim that the insurance be annulled and the premium returned (Ristorno), with deduction, however, where not otherwise agreed, of one

det halve af den betingede Præmie, hvis denne er mindre end  $\frac{1}{2}$  pCt.

**266.** Naar en Forsikring paa Grund af manglende Interesse, Overforsikring, dobbelt Forsikring, urigtige eller manglende Angivelser eller af anden lignende Aarsag bliver helt eller delvis ugyldig, men den, der har tegnet Forsikringen, og i Tilfælde af Forsikring for fremmed Regning tillige den forsikrede paa den Tid, da han gav Bemyndigelse til Forsikringens Afslutning, har været i god Tro med Hensyn til den Omstændighed, som bevirker Forsikringens Ugyldighed, kan Ristorno af Præmien forlanges mod det ovenfor bestemte Afdrag, dog at Begæring herom fremsættes, forinden Genstanden udsættes for Fare.

### Ellevte Kapitel.

#### Om Səpanteret og Søfordringers Præskription.

**267.** Fordringer, for hvilke Kreditor efter Bestemmelserne i nærværende Kapitel har Səpanteret (Søfordringer), ere fortrinsberettigede til Fyldestgørelse af Pantet efter de offentlige Afgifter, hvorfor Pantet hæfter, men fremfor al anden Gæld.

**268.** Səpanteret i Skib og Fragt tilkommer følgende Fordringer:

1. Lodspenge, Bjergeløn og Udgifter i Anledning af Skibets Befrielse fra Fjenden;
2. Skipperens og Mandskabets Fordringer paa Ilyre og anden Godtgørelse, hvorpaa de for Tjeneste paa Skibet have lovligt Krav;
3. Fordringer paa Bidrag til almindeligt Havari saavel som

det Halve af den betingede Præmie, hvis denne er mindre end  $\frac{1}{2}$  pCt.

**266.** Naar en Forsikring paa Grund af manglende Interesse, Overforsikring, dobbelt Forsikring, urigtige eller manglende Angivelser eller af anden lignende Aarsag bliver helt eller delvis ugyldig, men den, der har tegnet Forsikringen, og i Tilfælde af Forsikring for fremmed Regning tillige den forsikrede paa den Tid, da han gav Bemyndigelse til Forsikringens Afslutning, har været i god Tro med Hensyn til den Omstændighed, som bevirker Forsikringens Ugyldighed, kan Ristorno af Præmien forlanges mod det ovenfor bestemte Afdrag, dog at Begjæringen herom fremsættes, forinden Gjenstanden udsættes for Fare.

### Ellevte Kapitel.

#### Om Sjøpanteret og Søfordringers Præskription.

**267.** Fordringer, for hvilke Kreditor efter Bestemmelserne i nærværende Kapitel har Sjøpanteret (Sjøfordringer), er fortrinsberettigede til Fyldestgørelse af Pantet efter de offentlige Afgifter, hvorfor Pantet hæfter, men fremfor al anden Gjæld.

**268.** Sjøpanteret i Skib og Fragt tilkommer følgende Fordringer:

1. Lodspenge, Bergeløn og Udgifter i Anledning af Skibets Befrielse fra Fienden;
2. Skibsførerens og Mandskabets Fordringer paa Ilyre og anden Godtgørelse, hvorpaa de har lovligt Krav for Tjeneste paa Skibet;
3. Fordringer paa Bidrag til almindeligt Havari, saavel

denna är mindre än en half procent af försäkringssumman.

**266.** Varder teeknad försäkring helt och hållet eller delvis ogild på grund af bristande försäkringsintresse, öfverförsäkring, dubbel försäkring, bristande eller origtig uppgift eller af annan dylik orsak, men har den, som tagit försäkringen, vid försäkringens afslutande oeh, när försäkringen tagits efter annans uppdrag, jemväl denne vid den tid, då han lemnade uppdraget, varit i god tro; då må ristorno tillgodonjutas med sådant afdrag, som i 265 § sägs, så vida yrkande derom göres innan det försäkrade föremålet utsättes för fara.

### Elfte kapitlet.

#### Om sjöpanträtt och om sjöfordringars preskription.

**267.** Bergenär, som för sin fordran har panträtt i fartyg, frakt eller inlastadt gods, efter ty här nedan sägs, njute betalning ur panten framför de borgenärer, som i 17 kap. handelsbalken omförmålas.

**268.** Panträtt i fartyg och frakt tillkommer nedanstående fordringar:

1. Lotspenningar, bergarelön och ersättning för fartygets befriande ur fiendes våld;
2. Befälhafvarens och besättningens fordran å hyra och annan godtgørelse, hvartill de på grund af sin anställning å fartyget äro lagligen berättigade;
3. Fordran å bidrag till gäldande af gemensamt haveri eller

ad § 267 S. Kap. 17 i Handelsbalken (se ovenfor ad § 3) handler om Kreditorernes Rangsfolge i Tilfælde af, at Skyldnerens Formue viser sig utilstrækkelig til alles Dækkelse. Med Hensyn til Indholdet fulder den svenske Regel om Søfordringernes privilegerede Panteret sammen med den danske og norske. Jfr. Handelsbalkens Kap. 17 § 2 i dens ved Loven af 12 Juni 1891 bestemte Lydelse.



## Danish Text.

reckoned at  $\frac{1}{4}$  per cent. of the insurance sum, but at half the premium agreed to, should the latter be less than  $\frac{1}{2}$  per cent.

**266.** If an insurance, wholly or partially, becomes null and void on account of lack of insurance interest, or of over-insurance, double insurance, wrong or deficient statements, or for any other similar reason, but he who has taken the insurance, and, in case of insurance for account of another person, also the party insured at the time, when he authorized the former to effect the insurance, was in good faith as to the circumstance which makes the insurance void, Ristorno of the premium can be demanded with the above mentioned deduction, provided always that a request to that effect is made before the insured object is exposed to danger.

## Norwegian Text.

one fourth per cent. of the amount of the insurance, but at one half of the premium stipulated on, if that is less than  $\frac{1}{2}$  per cent.

**266.** When an insurance, on account of a lack of sufficient value, over-insurance, repetition of insurance, erroneous or imperfect statements, or from other similar reasons becomes void, either entirely or in part, the party who effected the insurance, and, in the event of insurance having been effected for the account of a third party, also the insured at the time he gave his sanction to the conclusion of the contract, if he has acted in good faith respecting the circumstance which has caused the invalidity of the insurance, may demand the return of the premium, subject to the deductions as fixed above, provided the application for its return be made before the thing is exposed to risk or danger.

## Swedish Text.

fourth per cent. of the insurance amount, or of half the premium, should the said premium be less than one half per cent. of the insurance amount.

**266.** If an underwritten insurance, wholly or partially, becomes null and void, on account of lack of insurable interest, or of over-insurance, double insurance, insufficient or incomplete statement, or for any other similar reason, and the person or persons taking the insurance, or causing the insurance to be taken by authority, were in good faith at the time of making the agreement, or when the authority was issued, then ristorno shall be given with such deduction as is mentioned in Art. 265, provided always, that a request to that effect is made previous to the security, interest, article or other object of insurance being exposed to any danger.

## Chapter XI.

### Regarding rights and privileges of maritime claims and the limitation of time for enforcing them.

**267.** Maritime claims according to the regulations of this chapter are privileged to be met out of the mortgaged security after the public taxes for which the said security is liable have been paid, but in priority to all other debts.

**268.** The following claims shall have the right to security in ship and freight, i. e.:

1. Pilotage, salvage and expenses occasioned by the releasing of the ship from the hands of enemies;
2. Any claim of master and crew for wages and other compensation to which they may be legally entitled in virtue of their service on board;
3. Any claim for contributions towards payment of general

## Chapter XI.

### Maritime liens and the extinction of maritime claims.

**267.** A claim for which a creditor, according to the rules of this chapter, has a maritime lien (maritime claims), shall be privileged to satisfaction out of the proceeds of the thing on which the lien attaches after the public dues chargeable thereon, but before all other claims.

**268.** A maritime lien upon the ship and the freight shall attach to the following claims:

1. Pilotage, salvage, and expenses incurred in rescuing a ship from enemies;
2. The claims of the master and the crew for wages and other remuneration to which they are lawfully entitled for service on board the ship;
3. Claims for contribution to general average and ex-

## Chapter XI.

### Regarding prior rights and the limitation of time for enforcing maritime claims.

**267.** A creditor who has security for his claim in ship, freight or cargo, as mentioned below, shall be entitled to payment out of such security in priority to the creditors referred to in Chap. XVII of the Mercantile Law.

**268.** The following claims shall have the right to security in ship and freight, i. e.:

1. Pilot dues, salvage compensation and indemnification for releasing the ship from the hands of enemies;
2. Any claim of master and crew for wages and other pay, to which they may be legally entitled on the strength of their engagement on board;
3. Any claim for proportion in general average, or for

To § 267 S. Chap. 17 of the Mercantile Law (see above, note to § 3) deals with the order of precedence of the creditors in case the debtor's property proves insufficient for the satisfaction of all. In so far as this matter is concerned the Swedish rule regarding the privileged pledge-right of maritime claims coincides with the Danish and Norwegian rules. Cf. Chap. 17 § 2 of the Mercantile Law as it has been modified by the Law of 12th June 1891.

Omkostninger, der blive at fordele efter lignende Regler (§§161, 2det Stykke, og 218, 2det Stykke). Bodmerifordringer, saa og Ladningsejeres Fordringer for Gods, der er bleven solgt til Skibets Behov under Rejsen;

4. Fordringer, der grunde sig paa Forpligtelser, som Skipperen i denne sin Egenskab har indgaaet, eller paa Misligholdelse af Kontrakt, som Rederen selv eller ved Fuldmægtig har afsluttet, og hvis Opfyldelse horte til Skipperens Pligter, jfr. § 7, saa og Fordringer paa Erstatning for Skade, som er forvoldt ved Fejl eller Forsømmelse i Tjenesten af nogen om Bord, jfr. § 8; Skipperens Fordring for, hvad han selv har ndlagt eller paataget sig at tilsvare til Bestridelse af Udgifter for Skibet.

Sopanteret i Skib omfatter ogsaa Skibets Tilbehør, hvortil ikke regnes Proviant, Brændsel, Kul eller andre Maskinformødenheder; Sopanteret i Fragt omfatter Bruttofragten for den Rejse, hvorfra Fordringen hidrører. Sopanteret for Bodmerifordring omfatter Skib eller Fragt eller begge Dele efter Bodmeribrevets Indhold, jfr. § 175.

269. De i § 268 opregnede Søfordringer blive at fyldestgøre i den Nummerfølge, i hvilken de der ere nævnte, for saa vidt de alle ere opstaaede under samme Rejse. Fordringer under samme Nummer have indbyrdes lige Ret, dog saaledes, at naar Fordringer under 1 og 3 ikke ere opstaaede ved samme Nødstilfælde, gaar den yngre foran den ældre.

Af Fordringer fra forskellige Rejser har den, der hidrører

som Omkostninger, der bliver at fordele efter lignende Regler (§§161, andet Stykke, og 218, andet Stykke), Bodmerifordringer samt Ladningsejeres Fordringer for Gods, der er bleven solgt til Skibets Behov under Reisen;

4. Fordringer, der grunder sig paa Forpligtelser, som Skibsføreren i denne sin Egenskab har indgaaet, eller paa Misligholdelse af Kontrakt, som Rederen selv eller ved Fuldmægtig har afsluttet, og hvis Opfyldelse horte til Skibsførerens Pligter, jfr. § 7, Fordringer paa Erstatning for Skade, som er forvoldt ved Feil eller Forsømmelse i Tjenesten af Nogen ombord, jfr. § 8, samt Skibsførerens Fordring for, hvad han selv har udlagt eller paataget sig at tilsvare til Bestridelse af Udgifter for Skibet.

Sjopanteret i Skib omfatter ogsaa Skibets Tilbehør, hvortil ikke regnes Proviant, Brændsel, Kul eller andre Maskinformødenheder; Sjopanteret i Fragt omfatter Bruttofragten for den Reise, hvorfra Fordringen hidrører. Sjopanteret for Bodmerifordring omfatter Skib eller Fragt eller begge Dele efter Bodmeribrevets Indhold, jfr. § 175.

269. De i § 268 opregnede Sjofordringer bliver at fyldestgøre i den Nummerfølge, i hvilken de der er nævnte, forsaavidt de alle er opstaaede under samme Reise. Fordringer under samme Nummer har indbyrdes lige Ret, dog saaledes, at naar Fordringer under No. 1 og 3 ikke er opstaaede ved samme Nødstilfælde, gaar den yngre foran den ældre.

Af Fordringer fra forskjellige Reiser har den, der hidrører fra

af annan kostnad, som skall fördelas efter enahanda grund (161, 218 §§); bodmerifordran, så ock lastegares fordran för gods, som blifvit under resa såldt för fartygets behof; och

4. Fordringar, som grunda sig på förbindelser, hvilka befälhafvaren i denna sin egenskap ingått för fartygets behof, eller på uteblifvit, felaktigt eller ofullständigt fullgörande af förbindelser, hvilka redaren sjelf eller annan på grund af redarens fullmakt ingått och som skolat af befälhafvaren i denna hans egenskap fullgöras, så ock fordringar å ersättning för skada, hvilken vållats genom fel eller försømmelse, som i 8 § sägs; befälhafvarens fordran för: hvad han sjelf förskjutit för fartygets behof eller på grund af egen utfästelse för sådant ändamål nödgats utgifva.

Panträtt i fartyg omfattar jemväl fartygets tillbehör; panträtt i frakt omfattar bruttofrakten för den resa, under hvilken fordringen uppkommit. Panträtt för bodmerifordran omfattar fartyg eller frakt eller beggadera, enligt bodmeribrevets innehåll.

Under fartygs tillbehör innefattas icke proviant eller bränsle, ej heller å ångfartyg kol eller andra för maskinens drift afsedda ämnen.

269. De i 268 § omförmälda fordringar ega, der de alla uppstått under samma resa, rätt till betalning i den nummerordning, i hvilken de i samma § äro nämnda. Fordringar, som äro upptagna under samma nummer, skola sig emellan njuta lika rätt; dock hvad angår de under 1 och 3 nämnda fordringar endast så vida de härleda sig från samma nödfall; eljest skall den yngre ega företräde till betalning framför den äldre.

Hafva fordringarne uppstått under olika resor, skola de,

## Danish Text.

average, as well as any costs which are to be apportioned according to similar rules (§§ 161, sect. 2nd and 218, sect. 2nd), bottomry claims, and the claims of the cargo-owner for goods sold for the requirements of the ship during the voyage;

4. All claims based on the engagements entered into by the master for the requirements of the ship in his capacity of master, or on non-fulfilment of any contract made by the ship-owner himself or his agent, and the fulfilment of which was among the duties of the master, *cfr.* § 7; also all claims for compensation for damage caused through fault or neglect in the service on the part of anybody on board, *cfr.* § 8; further the master's claim for whatever he may himself have laid out or taken upon himself to pay for the requirements of the ship.

## Norwegian Text.

penses to be apportioned according to similar rules (§ 161, 2d. section, and § 218, 2d. section), bottomry claims, and the claims of the owners of the cargo for goods sold during the voyage for the requirements of the ship;

4. Claims arising from obligations undertaken by the master in his capacity as such, or from the non-fulfilment of contracts concluded by the owners of the ship, personally or by deputy, and which it was the duty of the master to fulfil (*see* § 7); claims for compensation for damage caused through the fault or negligence of any person employed on board in the service of the ship (*see* § 8); and the claims of the master for money paid out, or undertaken to be paid, by him, for the purpose of covering the expenses of the ship.

## Swedish Text.

the payment of any costs to be apportioned on the same principles (Arts. 161, 218); bottomry claim, as well as the claim of any owner of cargo for goods sold during the voyage for the requirements of the ship;

4. All claims based on the engagements of the master for the requirements of the ship in his capacity of master, or based on any incorrectness or omission in the fulfilment of any engagements entered into by the owners, or any other person on the strength of the owners' power of attorney and which should have been fulfilled by the master in his said capacity; all claims for damage caused by any such fault or neglect as mentioned in Art. 8; and further the master's claim for whatever he may himself have advanced for the requirements of the ship, or been obliged to pay for such purpose on the strength of his personal promise.

The right to security in a ship includes also the ship's appurtenances, to which are not reckoned provisions, fuel, coal or other requisites for the working of the engines. The right to security in freight comprises the gross-freight for the voyage from which the debt has its origin. The right to security for a bottomry-claim comprises ship or freight, or both, according to the contents of the bottomry bill, *cfr.* § 175.

A maritime lien upon the ship shall also include the apparel of the ship, but not provisions, fuel, coal or other engineer's stores. A maritime lien upon the freight shall attach to the gross freight for the voyage from which the claim originates. A maritime lien for a bottomry claim shall attach to the ship, or the freight, or both, according to the wording of the bottomry bond; *see* § 175.

The right to security in a ship includes everything belonging to the ship, and the security in freight includes the gross freight for the voyage during which the debt has been incurred. The right to security for a bottomry claim shall comprise ship or freight, or both, according to the contents of the bottomry bond.

Neither provisions nor fuel, nor, in the case of a steamer, the coals and other requisites for the working of the engines, shall be included amongst the ship's belongings in the sense of the present article.

**269.** The maritime claims mentioned in § 268 shall, if they have all arisen during the same voyage, be paid in the order in which they are enumerated there. The claims specified in the same subdivision, shall among themselves have equal rights, in such a way, however, that in case claims under 1 and 3 are not due to the same case of need, the claim of a later date shall have priority to an older one.

**269.** The claims under a maritime lien enumerated in § 268, shall be satisfied in the serial succession in which they are therein named, provided all of them have arisen under the same voyage. Claims coming under a like number shall all have equal rights, but, however, in such manner that, when claims under No. 1 and 3, have not originated from one and the same case of emergency, the later claim shall take precedence of the earlier one.

If the claims have arisen during different voyages, those

If the several claims date from different voyages, the

**269.** The claims mentioned in Art. 268, if they have all arisen during the same voyage, shall have the right to payment in the order in which they are enumerated in the said Article. The claims specified in the same subdivision shall between themselves enjoy equal rights. As far as the claims in subdivisions 1 and 3 are concerned, they shall only enjoy equal rights between themselves when they are due to the same cause of necessity, otherwise the claim of a later date shall have priority to an older claim.

If the claims have arisen during different voyages, those

fra en senere, Fortrinet for enhver, der hidrører fra en tidligere; dog beholde Skipper og Mandskab den dem tillagte Fortrinsret i Skibet for saa meget af deres Tilgodehavende efter sidste Hyrekontrakt, som udgjør Hyre for højst de sidste 12 Maaneder, selv om Skibet i den Tid har gjort flere Rejser.

270. Er Skib tabt eller beskadiget, eller er Fragt helt eller delvis tabt, under saadanne Omstændigheder, at der tilkommer Rederen Erstatning hos en skadegørende eller ifølge Reglerne om almindeligt Havari, har den Fordringshaver, som har Sopanteret i Skibet eller Fragten, samme Ret i Erstatningsbeløbet. Derimod hæfter den Erstatning, som en Forsikringsgiver har at udrede for Skib eller Fragt, ikke i det forsikrede Pants Sted.

271. Naar Skibet sælges ved Tvangsauktion, bortfalder Sopanteretten i Skibet, men Fordringshaveren har da i Stedet derfor Panteret i Købesummen, saa længe den ikke er udbetalt. Det samme gælder, naar Skibet sælges efter paa behørig Maade at være erklæret for ustandsætteligt. Overgaar ellers Ejendomsretten over Skibet ved frivillig Afhændelse til en anden, hæfter det fremdeles for de Fordringer, som nævnes i § 268.

272. Bortfalder Sopanteret derved, at Erstatningsbeløb, Købesum eller Fragt, som hæfter for Søfordring, indbetales til Rederen, bliver denne, for saa vidt han ikke allerede er personlig forpligtet, ansvarlig for Fordringen, saa langt det oppebarnne Beløb rækker. Paa

en senere, Fortrinet for enhver, der hidrører fra en tidligere; dog beholder Skibsfører og Mandskab den dem tillagte Fortrinsret i Skibet for saa meget af deres Tilgodehavende efter sidste Hyrekontrakt, som udgjør Hyre for højst de sidste 12 Maaneder, selv om Skibet i den Tid har gjort flere Rejser.

270. Er Skib tabt eller beskadiget, eller er Fragt helt eller delvis tabt under saadanne Omstændigheder, at der tilkommer Rederen Erstatning hos en skadegørende eller ifølge Reglerne om almindeligt Havari, har den Fordringshaver, som har Sjøpanteret i Skibet eller Fragten, samme Ret i Erstatningsbeløbet. Derimod hæfter den Erstatning, som en Forsikringsgiver har at udrede for Skib eller Fragt, ikke i det forsikrede Pants Sted.

271. Naar Skibet sælges ved Tvangsauktion, bortfalder Sjøpanteretten i Skibet, men Fordringshaveren har da i Stedet derfor Panteret i Kjøbesummen, saalænge den ikke er udbetalt. Det samme gælder, naar Skibet sælges efter paa behørig Maade at være erklæret for ustandsætteligt. Overgaar ellers Eiendomsretten over Skibet ved frivillig Afhændelse til en Anden, hæfter det fremdeles for de Fordringer, som nævnes i § 268.

272. Bortfalder Sjøpanteret derved, at Erstatningsbeløb, Kjøbesum eller Fragt, som hæfter for Sjøfordring, indbetales til Rederen, bliver denne, for saavidt han ikke allerede er personlig forpligtet, ansvarlig for Fordringen, saalænge det oppebarnne Beløb rækker. Paa

hvilka härleda sig från en senare resa, ega företräde framför alla den, som uppstått under en tidigare; dock behålla befälhafvare och besättning den dem tillagda förmånsrätt i fartyget för så mycket af hvad de på grund af sist ingångna hyresaftalet hafva att fordra, som belöper å senaste tolf månader, ändå att fartyget under tiden gjort flere resor.

270. Har fartyg i gemensamt haveri eller till följd af någons vållande gått förloradt eller lidit skada, eller har frakt på sådant sätt helt och hållet eller till någon del förlorats, skola de borgenärer, hvilka enligt 268 § hafva panträtt i fartyget eller i frakten, ega enahanda rätt till den redaren tillkommande ersättning.

Ersättning, som utgår på grund af tagen försäkring, hafte icke i pantens ställe.

271. Försäljes helt fartyg efter utmätning eller under konkurs i den ordning, som för försäljning af utmätt fartyg är stadgad, upphøre panträtten i fartyget, men borgenären ege undfå del i köpeskillingen, som i utsökningslagen sägs.

Har fartyg efter timad skada förklarats icke vara istandsättligt och derefter blifvit försäldt, upphøre panträtten i fartyget, men borgenären ege i stället enahanda rätt till köpeskillingen, så vidt den utestår ogulden. Öfvergår eljest genom frivillig afhandling eganderätten till fartyg, hafte det fortfarande för de fordringar, som i 268 § nämnas.

272. Har redare uppburit ersättningsbelopp, köpeskillning eller frakt, som häftade för fordran, för hvilken han icke personligen svarade, vare redaren för samma fordrans betalning ansvarig, så långt det uppburna beloppet förlär. Har redaren inlastat gods för egen räkning,

ad § 271 S. Utsökningsloven (af 10 August 1877) §§ 89, 90, 92, 93, 118 og 119 i den ved Loven af 10 Mai 1901 og § 117 i den ved Loven af 12 Juni 1891 bestemte Lydelse indeholder Forskrifterne om Salg af Skibe, hvori der er taget Udlæg.

## Danish Text.

arisen from a later voyage shall have priority to each and every claim from any previous voyage. The master and crew, however, retain their priority in the ship for so much of what is due to them, according to their last articles of agreement, as constitutes their wages for the last 12 months at most, even if the ship has in the meantime made several voyages.

**270.** If a ship is lost or damaged, or should freight be wholly or partially lost under such circumstances that the ship-owner is entitled to obtain compensation from a person who has caused the damage, or in virtue of the rules for general average, the creditor who has a maritime security in the ship or the freight, has the same right as to the amount of compensation, whereas the compensation which an underwriter has to pay for ship and freight is not liable instead of the mortgage insured.

**271.** If a ship is sold by an execution sale, the right to security in the ship ceases, but in its stead the creditor has a lien on the purchase money, as long as this money has not been paid. The same shall be applicable in case the ship is sold after it has been in due form declared irreparable. If the ownership is otherwise transferred to another by any voluntary disposal, the ship continues to be liable for the claims mentioned in § 268.

**272.** If a right to security ceases by the fact that compensation, purchase money or freight, which is given as security for a maritime claim, is paid to the shipowner, the latter shall, provided that he is not already personally liable, become answerable for the

## Norwegian Text.

claims arising from a later voyage shall take precedence of those arising from an earlier voyage; but the master and crew shall retain their preferential claims on the ship for so much of the wages due to them under the last agreement as may amount to pay for, at most, the last 12 months, even if during that time the ship has made several voyages.

**270.** If a ship has been lost or damaged, or if freight has been entirely or partly lost, under such circumstances as entitle the owner to compensation from any person responsible for the damage or under the rules of general average, any creditor having a maritime lien upon the ship, or the freight, shall have the same lien on the amount to be paid as indemnification. On the other hand, the amount to be paid by any insurer on a lost ship or freight cannot be recovered in place of the insured pledges (the ship or the freight).

**271.** When a ship has been sold by compulsory sale by auction, the maritime lien attaching to the ship shall become void, but the creditor shall instead thereof be entitled to a lien on the purchase money provided it has not been paid over. The same rule shall apply when the ship is sold after having been lawfully declared unfit for repair. If, on the other hand, the ownership of a vessel is voluntarily disposed of to another person, the ship shall remain liable for the claims enumerated under § 268.

shall be entitled to the same right in the purchase-amount, provided the said purchase-amount has not yet been paid. If the ownership is otherwise transferred by any voluntary agreement, the ship shall continue to stand surety for the claims mentioned in Art. 268.

**272.** If the maritime lien becomes void through the amount of compensation, the purchase money or the freight which are security for a maritime claim having been paid to the owner of the ship, such owner shall, provided he is not already personally liable, be

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emanating from a later voyage shall have priority to each and every claim from any previous one. The master and crew, however, to retain the priority in the ship secured to them for so much of their claims as is earned during the last twelve months on the strength of the last agreement, in spite of the vessel having in the meantime made several voyages.

**270.** If a ship is lost or damaged in general average, or by the fault or neglect of any person, or if freight is in a like manner wholly or partially lost, the creditors having security in the ship or freight in conformity with Art. 268, shall enjoy the same right to the compensation due and payable to the owners of the ship.

The compensation payable on the strength of an insurance effected cannot be claimed in lieu of the security.

**271.** If a ship, with all her gear and appurtenances, is sold subsequent to and by virtue of a writ to satisfy a debt, or is sold in bankruptcy, in the manner enacted for the sale of a ship arrested by writ, the right to security in the ship shall cease, but the creditor shall be entitled to a portion of the purchase-amount as stated in the Law of Attachment.

If a ship has been declared a constructive total loss, having suffered damage, and is thereupon sold, the right to security in the ship shall cease, but in lieu thereof the creditor

right in the purchase-amount, provided the said purchase-amount has not yet been paid. If the ownership is otherwise transferred by any voluntary agreement, the ship shall continue to stand surety for the claims mentioned in Art. 268.

**272.** If the owners have received any compensation, or purchase-amount, or freight standing surety for any claim, for which they were not personally liable, such owners shall be responsible for the payment of the claim as far as the amounts above referred to

*To § 271 S.* The Law of Attachment (of 10 August 1877) §§ 89, 90, 92, 93, 118 and 119 as they have been modified by the Law of 10th May 1901, and § 117 as it has been modified by the Law of 12th June 1891, contain the regulations concerning the sale of vessels on which an arrest has been effected.

samme Maade er han ansvarlig for gangbar Fragt af Gods, der er afladet for hans egen Regning.

samme Maade er han ansvarlig for gangbar Fragt af Gods, der er afladet for hans egen Regning.

vare han med det belopp, som, derest godset inlastats för annans räkning, skolat utgå i frakt, personligen ansvarig för fordran, som i ty fall skolat ega panträtt i frakten.

Indbetales de ovennævnte Beløb i Rederens Konkursbo, anvendes de til Dækning af de Fordringshavere, som havde Sjøpanteret i dem.

Indbetales de ovennævnte Beløb i Rederens Konkursbo, anvendes de til Dækning af de Fordringshavere, som havde Sjøpanteret i dem.

Hafva ersättningsbelopp, köpeskilling eller frakt blifvit inbetalda efter det ansökning ingifvits om redarens försättande i konkurs, då ege, der konkurs följer på den ansökning, borgenär, för hvars fordran det inbetalda beloppet häftade, så långt samma belopp förslår, erhålla utdelning i konkursen med den förmånsrätt, som skulle hafva tillkommit honom, der beloppet utestått oguldet.

273. Overgaar Skib ved frivillig Overdragelse til udenlandsk Eier, uden at de Søfordringer, for hvilke det hæfter, forinden ere blevne fyldestgjorte, bliver den forrige Eier personlig ansvarlig for deres Betaling, selv om han forinden kun hæftede med Skib og Fragt. Godtgør han, at Skibet paa den Tid, Overdragelsen fandt Sted, var utilstrækkeligt til Fordringens Fyldestgørelse, gaar hans Ansvar dog ikke ud over Skibets Værdi.

273. Overgaar Skib ved frivillig Overdragelse til udenlandsk Eier, uden at de Sjøfordringer, for hvilke det hefter, forinden er blevne fyldestgjorte, bliver den forrige Eier personlig ansvarlig for deres Betaling, selv om han forinden kun heftede med Skib og Fragt. Godtgør han, at Skibet paa den Tid, Overdragelsen fandt Sted, var utilstrækkeligt til Fordringens Fyldestgjørelse, gaar hans Ansvar dog ikke udover Skibets Værdi.

273. Har eganderätten till fartyg genom frivillig afhandling öfvergått till utländsk man, svare förre egaren personligen för fordran, för hvilken han förut häftade allenast med fartyget och frakten, dock icke utöfver det värde, fartyget hade vid tiden för öfverlåtelsen.

274. Har Rederen til Dækning af Søfordring udbetalt alt, hvad han ifølge §§ 272 og 273 var skyldig at erlægge, og det senere viser sig, at anden Fordringshaver var bedre berettiget, er Rederen ikke pligtig at betale noget yderligere, saafremt han, da Udbetalingen fandt Sted, ikke havde Kundskab om dennes Krav. Dette gælder dog ikke, hvor Udbetalingen er sket til Dækning af Fordringer, for hvilke Rederen hæftede personlig.

274. Har Rederen til Dækning af Sjøfordring udbetalt Alt, hvad han ifølge §§ 272 og 273 var skyldig at erlægge, og det senere viser sig, at anden Fordringshaver var bedre berettiget, er Rederen ikke pligtig til at betale noget yderligere, saafremt han, da Udbetalingen fandt Sted, ikke havde Kundskab om dennes Krav. Dette gjælder dog ikke, hvor Udbetalingen er skeet til Dækning af Fordringer, for hvilke Rederen heftede personlig.

274. Nu har redare till gäldande af sådan fordran, som i 268 § är nämnd, utbetalt hvad jemlikt 272 och 273 §§ ålag honom utgifva; kommer sedan annan borgenär och visar sig ega bättre rätt än den, som fick betalningen, vare redaren dock icke till vidare betalningsskyldighet förbunden, så vida han icke, när betalningen erlades, egde kunskap om den andres fordran; dock ege redaren icke att i sådant afseende räkna sig till godo hvad han utgifvit till gäldande af fordran, för hvilken han svarade personligen.

Den Fordringshaver, som saaledes har oppebaaret, hvad der rettelig tilkom en anden, svarer for dennes Fordring med det oppebaarne Beløb, for saavidt han havde Kundskab om den, da han modtog Betalingen.

Den Fordringshaver, som saaledes har oppebaaret, hvad der rettelig tilkom en Anden, svarer for dennes Fordring med det oppebaarne Beløb, forsaavidt han havde Kundskab om den, da han modtog Betalingen.

Borgenär, som sålunda uppburit hvad rätteligen bort tillkomma annan, svare med hvad han uppburit för den andres fordran, der han om samma fordran egde kunskap när han erhöi betalningen.

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payment of the claim so far as the amount received goes. In the same manner he is responsible for current freight of goods which are shipped on his own account.

If the above-mentioned amounts are paid in to the owner's insolvent estate, they shall be employed to pay the creditors who have a maritime security in them.

**273.** In case the ownership of a vessel by any voluntary agreement is transferred to a foreigner, and the maritime claims for which it is liable have not previously been paid, the former owner shall be personally responsible for the payment of the said claims, even if he previously was liable only with ship and cargo. If, however, he proves that the ship, at the time of transfer, was insufficient for the meeting of the claim, his liability shall not exceed the value of the ship.

**274.** If the ship-owner, in order to meet a maritime claim, has paid all that, according to §§ 272 and 273, he was bound to pay, and it appears subsequently that another creditor had a better right, the owner is not bound further to pay anything, provided he, at the time when the payment was made, was not aware of the other creditor's claim. This, however, shall not apply in case the payment has been made in order to meet claims for which the owner was personally responsible.

The creditor, who has thus received what was properly due to another, shall with the amount received be answerable for the latter person's claim, provided that he was aware of this claim when he got the payment.

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responsible for the claim to the extent of the amount he has thus received. In like manner he shall be held responsible for the current rate of freight for goods shipped on his own account.

If, in the event of the bankruptcy of the owner, the amounts are paid in to the administrators of his estate, they shall be applied towards covering the claims of those who possess a maritime lien on them.

shall be entitled to receive, as suffice, payment from the same priority as if the amount

**273.** If, by voluntary transfer, the ownership of a ship passes to an alien before the maritime claims for which the ship is liable have been satisfied, the late owner shall become personally responsible for the payment of such claims, even though before the sale his liability may have been limited to the ship and the freight only. If he can prove that, at the time of the transfer, the value of the ship was not sufficient to satisfy the claims, his liability shall not exceed the value of the ship.

**274.** If, for the satisfaction of a maritime claim, the owner has paid out the whole amount due by him under §§ 272 and 273, he shall, if subsequently another creditor proves to have a better title, not be held liable for further payment, provided that, when payment was made, he was not aware of the claim of the other creditor. This rule shall not apply if the payment was made in satisfaction of claims for which the owner was personally responsible.

Any creditor who has thus received money to which another creditor had a better right, shall, if he had knowledge of the other claim at the time he received payment, be responsible for such claim up to the amount received by him.

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will suffice. If the owners have shipped goods on their own account they shall be personally responsible for any claim which would have been entitled to security in the freight, up to such amount as would have been charged as freight if the goods had been shipped for account of another person.

If any amount of compensation, purchase-money, or of freight has been paid, subsequent to the lodging of a petition to have the owners declared bankrupt, and such petition be granted, any creditor having security for his claim in the amount paid in, far as the said amount will bankruptcy estate, with the had remained unpaid.

**273.** In case by any voluntary agreement the ownership has been transferred to foreigners, the former owners shall be personally responsible for any claim for which they were previously liable only with ship and cargo; such liability, however, not to exceed the value of the ship at the time of transfer.

**274.** If the owners have paid their liabilities in conformity with Arts. 272 and 273, for the settlement of any of the claims mentioned in Art. 268, and some other creditor subsequently appears and proves himself to have a better right than the person who obtained the payment, the owners shall be free from any further liability, provided they were not aware of the latecomer's claim at the time of making the payment; the owners, however, in such respects not to be allowed to deduct from their liability any payment they may have made in settlement of any claim for which they were personally responsible.

The creditor, having thus received monies properly due to another person, shall be liable for such claim of the latter person, should he have been aware of the existence of the said claim at the time he obtained the payment.

275. At et Skib af Ejeren er overladt til en anden til Brug i Søfart for egen Regning, har ingen Indflydelse paa Søpant-haveres Ret efter dette Kapitel til at holde sig til Skibet.

276. Søpantretet i Ladningen haves for følgende Fordringer:

1. Bjergelon og Udgifter i Anledning af Ladningens Befrielse fra Fjenden;
2. Fordringer paa Bidrag af Ladningen til almindeligt Havari eller til Omkostninger, som skulle fordeles, efter lignende Regler (§§ 161, 2det Stykke, og 218, 2det Stykke), Bodmerilaan og Ladningsejeres Fordringer for Gods, der er blevet solgt til Bedste for andre Ladningsejere;
3. Fordringer, der grunde sig paa Forpligtelser, som Skipperen i denne sin Egenskab har indgaaet for Ladningsejeren Regning, og Skipperens Fordringer for, hvad han selv har udlagt eller paa-taget sig at tilsvare til Bestridelse af Udgifter for Ladningen;
4. Fordringer for Fragt samt Erstatning for Overliggedage og yderligere Ophold ved Lastning eller Losning.

Fordringerne blive at fyldestgøre i den Nummerfølge, i hvilken de ovenfor ere anførte. Inden for hvert Nummer ere de lige berettigede, de under Nr. 1 og 2 dog kun for saa vidt de hidrøre fra samme Nodstilfælde; ellers gaar yngre Fordring foran ældre.

277. Søpantretet i Ladning bortfalder, naar Godset er udleveret til Befragter eller Ladningsmodtager. Det samme gælder, naar Godset er solgt ved Tvangsauktion eller af Skipperen under Rejsen til Skibets eller Ladningens Behov, men

275. At et Skib af Ejeren er overladt til en Anden til Brug i Søfart for egen Regning, har ingen Indflydelse paa Søpant-baveres Ret efter dette Kapitel til at holde sig til Skibet.

276. Søpantretet i Ladning haves for følgende Fordringer:

1. Bergelon og Udgifter i Anledning af Ladningens Befrielse fra Fienden;
2. Fordringer paa Bidrag af Ladningen til almindeligt Havari eller til Omkostninger, som skal fordeles efter lignende Regler (§§ 161, andet Stykke og 218 andet Stykke), Bodmerilaan og Ladningsejeres Fordringer paa Gods, der er blevet solgt til Bedste for andre Ladningseiere;
3. Fordringer, der grunder sig paa Forpligtelser, som Skibsføreren i denne sin Egenskab har indgaaet for Ladningseierens Regning, og Skibsførers Fordringer for, hvad han selv har udlagt eller paa-taget sig at tilsvare til Bestridelse af Udgifter for Ladningen;
4. Fordringer for Fragt samt Erstatning for Overliggedage og yderligere Ophold ved Lastning og Losning.

Fordringeren bliver at fyldestgøre i den Nummerfølge, i hvilken de ovenfor er anførte. Inden for hvert Nummer er de lige berettigede, de under Nr. 1 og 2 dog kun, for saa vidt de hidrører fra samme Nodstilfælde; ellers gaar yngre Fordring foran ældre.

277. Søpantretet i Ladning bortfalder, naar Godset er udleveret til Befragter eller Ladningsmodtager. Det samme gjælder, naar Godset er solgt ved Tvangsauktion eller af Skibsføreren under Reisen til Skibets eller Ladningens Behov,

275. Har fartygs egare öfverlätit fartyget till annan att nyttja det till sjöfart för egen räkning, vare sådant utan verkan till förringande af den rätt, som, efter ty i denna lag stadgas, tillkommer de i 268 § omförmälda fordringar, de der uppstått efter det öfverlåtandet skedde.

276. Panträtt i inlastadt gods tillkommer nedanstående fordringar:

1. Bergarelönen och ersättning för godsets befriande ur fiendes våld;
2. Fordran å bidrag till gäldande af gemensamt haveri eller af annan kostnad, som skall fördelas efter enahanda grund (161, 218 §§); bodmerifordran äfvensom lastegares fordran för gods, som blifvit under resa såldt för annan last garees räkning;
3. Fordringar, som grunda sig på förbindelser, hvilka befälhafvaren i denna sin egenskap för lastens behof ingått; befälhafvarens fordran för hvad han själf förskjutit för lastens behof eller på grund af egen utfästelse för sådant ändamål nödgats utgifva; och
4. Fordran å frakt och ersättning för öfverliggedagar eller för annat uppehåll vid lastning eller lossning.

De här onförmälda fordringar skola sig emellan ega rätt till betalning i den nummerordning, i hvilken de ofvan äro nämnda. Fordringar, som äro upptagna under samma nummer, njute lika rätt; dock hvad angår de under 1 och 2 upptagna fordringar endast så vida de härleda sig från samma nödfall; eljest skall den yngre hafva företräde framför den äldre.

277. Lossas gods, som häftar för fordran, till befraktares eller lastemottagares förfogande, eller varder under resa gods såldt för fartygets eller lastens behof, upphöre panträtten i godset. Lag samma vare, der godset säljes efter utmätning



## Danish Text.

**275.** The circumstance that a ship by the owner has been committed to another to be navigated for his account, does not in any way interfere with the right to security in the ship, according to this chapter.

**276.** The following claims shall have the right to security in the cargo, i. e.:

1. Salvage and expenses occasioned by the releasing of the cargo out of the hands of the enemy;
2. Claims for contribution of the cargo to general average, or to the payment of any other expenses which are to be apportioned on similar principles (§§ 161, 2nd part, and 218, 2nd part); bottomry loans, and the cargo-owner's claims for goods sold for the benefit of the other cargo-owners;
3. Claims based on engagements entered upon by the master in his capacity of master on the cargo-owner's account, and the master's claims for whatever he may himself have laid out or taken upon himself to pay for the requirements of the cargo;
4. Claims in respect of freight, compensation for demurrage-days and any further delay occasioned by loading or discharging.

The claims are to be met in the order in which they are enumerated above. Within each subdivision they shall enjoy equal rights, the claims in the subdivisions 1 and 2, however, only in so far as they arise from the same case of need; otherwise, the claim of a later date shall have priority to an older one.

**277.** A maritime security in the cargo becomes null and void when the goods have been delivered to the charterer or the consignee. The same is the case when the goods have been sold by an execution sale or by the master during

## Norwegian Text.

**275.** If the owner of a ship has conveyed to another person the right of using and navigating the ship on his own account, the right of creditors, holding maritime liens in accordance with this chapter, to satisfaction out of the proceeds of the ship shall not be prejudiced thereby.

**276.** A maritime lien upon cargo shall attach to the following claims:

1. Salvage and expenses incurred in rescuing the cargo from enemies;
2. Claims on the cargo for contribution to general average, or expenses to be apportioned according to the same rules (§ 161, 2d. section, and § 218, 2d. section), bottomry claims and the claims of the owners of cargo sold for the good of other owners of cargo shipped;
3. Claims arising from obligations undertaken by the master in his capacity as such, for the account of the cargo-owner, and the claims of the master for money paid out, or undertaken to be paid by him for the purpose of covering expenses incurred for the goods;
4. Claims for freight and demurrage, and for further detention through loading or unloading.

The claims shall be satisfied in the serial succession in which they are named above. Claims under the same number shall all have equal rights, but those under No. 1 and 2, however, only provided they originate from one and the same case of emergency; otherwise a later claim shall take precedence of an earlier one.

**277.** A maritime lien upon the cargo shall become void upon the delivery of the goods to the charterer or receiver. The same rule shall apply when the goods have been sold by compulsory auction, or by the master during the

## Swedish Text.

**275.** In case the owners have let the ship to another person, to be navigated for the account of such person, such course of proceeding shall in no way lessen the right which in conformity with this Law, is due to the claims mentioned in Art. 268, where arisen subsequent to the transfer.

**276.** The following claims shall have the right to security in the cargo on board, i. e.:

1. Salvage compensation and any indemnification for releasing the cargo out of the hands of enemies;
2. Any claim for proportion in general average, or for the payment of any other costs to be apportioned on the same principles (Arts. 161 and 218). Bottomry claim as well as the claim of any owner of cargo for goods sold during the voyage for account of any other owner of cargo;
3. All claims based on the engagements undertaken by the master in his capacity of master for the requirements of the cargo, and the master's claim on account of whatever he may himself have advanced for the requirements of the cargo, or been obliged to pay for such purpose on the strength of his private engagement;
4. Any claim in respect of freight, compensation for demurrage, or for any other delay in loading or discharging.

The claims hereabove mentioned shall between themselves enjoy the right to payment in the order in which they are enumerated. The claims specified in the same subdivision shall enjoy equal rights. As far as the claims in subdivisions 1 and 2 are concerned, they shall only enjoy equal rights between themselves when they are due to the same cause of necessity; otherwise the claim of a later date shall have priority to an older claim.

**277.** If goods standing security for any claim should be discharged at the disposal of the charterer or the consignee, or should any goods be sold for the benefit of the ship or cargo during the voyage, the right to security in the said

Fordringshaveren har i Stedet derfor Panteret i Købesummen, saa længe den ikke er udbetalt.

men Fordringshaveren har i Stedet derfor Panteret i Kjøbesummen, saalænge den ikke er udbetalt.

eller under konkurs i den ordning, som för försäljning af utmått gods i fartyg är stadgad; men borgenären ege undfå del i köpeskillingen, som i utsökningslagen sägs.

278. I Henseende til Søpanthavers Ret til at søge Betaling i Erstatningsbeløb, der skyldes for Skade eller Tab paa Ladningen, eller som tilkomme Ladningen ifølge Reglerne om almindeligt Havari, gælder lignende Regler som de, der ere givne i § 270 med Hensyn til Søpanteret i Skib. Erstatning, som skal udredes af Forsikringsgiver, hæfter heller ikke her i Pantets Sted.

278. I Henseende til Sjøpanthavers Ret til at søge Betaling i Erstatningsbeløb, der skyldes for Skade eller Tab paa Ladningen, eller som tilkommer Ladningen ifølge Reglerne om almindeligt Havari, gjælder lignende Regler som de, der ere givne i § 270 med Hensyn til Sjøpanteret i Skib. Erstatning, som skal udredes af Forsikringsgiver, hefter heller ikke her i Pantets Sted.

278. Är lastegare berättigad till ersättning för gods, som gått förloradt eller skadats, eller har gods under resan blifvit såldt för fartygets behof eller för annan lastegares räkning, vare om borgenärens rätt till den lastegaren tillkommande ersättning lag, som i 270 § för fartyg stadgas.

Ersättning, som utgår på grund af tagen försäkring, hafte icke i pantens ställe.

279. Har Ladningseieren oppebaaret nogen Del af Købesum eller Erstatningsbeløb, hvori en Søpanthaver i Medfør af §§ 277 og 278 var berettiget til at søge Betaling, bliver Ladningseieren personlig ansvarlig for Søfordringen efter de samme Regler, som i §§ 272 og 274 ere givne for Rederens Vedkommende.

279. Har Ladningseieren oppebaaret nogen Del af Kjøbesum eller Erstatningsbeløb, hvori en Sjøpanthaver i Medfør af §§ 277 og 278 var berettiget til at søge Betaling, bliver Ladningseieren personlig ansvarlig for Sjøfordringen efter de samme Regler, som i §§ 272 og 274 er givne for Rederens Vedkommende.

279. Har lastegare uppburit fordringsbelopp, hvartill borgenär egde sådan rätt, som i 277 eller 278 § sägs, vare om lastegarens ansvarighet för fordrans betalning lag, som i 272 och 274 §§ för redare stadgas.

Ligeledes finder Bestemmelsen i § 272, 2det Stykke, tilsvarende Anvendelse, naar Beløbene ere indbetalte i Ladningsejerens Konkursbo.

Ligeledes finder Bestemmelsen i § 272, andet Stykke tilsvarende Anvendelse, naar Beløbene er indbetalt i Ladningseierens Konkursbo.

Har sådant belopp blifvit indbetaldt efter det ansökning ingifvita om lastegarens försättande i konkurs, gälle hvad i 272 § sägs.

280. Lader Skipperen Gods, hvorpaa der hæfter Søfordring, udlevere uden Fordringshaverens Samtykke, bliver saavel Skipperen som Modtageren, saafremt denne paa den Tid, Udleveringen fandt Sted, var vidende om Hæftelsen, ansvarlig for Søfordringens Betaling. Godtgøres det, at Ladningen ved Udleveringen ikke var tilstrækkelig til Fordringens Fyldestgørelse, gaar Ansaret dog ikke ud over Ladningens Værdi.

280. Lader Skibsforeren Gods, hvorpaa der hefter Sjøfordring, udlevere uden Fordringshaverens Samtykke, bliver saavel Skibsforeren som Modtageren, saafremt denne paa den Tid, Udleveringen fandt Sted, var vidende om Heftelsen, ansvarlig for Sjøfordringens Betaling. Godtgjøres det, at Ladningen ved Udleveringen ikke var tilstrækkelig til Fordringens Fyldestgjørelse, gaar Ansaret dog ikke ud over Ladningens Værdi.

280. Utlemnar befälhafvare utan borgenärens tillstånd gods, som häftar för fordran, till befraktares eller lastemottagarens förfogande, svare befälhafvaren för den fordrans betalning, dock icke utöfver det värde, godset vid lossningen hade; enabanda ansvarighet åligge jemväl mottagaren för fordran, för hvilken han eljest icke skolat personligen svara, så vida han egde kunskap om fordringen när lossningen skedde.

281. Har en Fordringshaver Søpanteret i flere Panter, kan han holde sig til ethvert af dem for sin hele Fordring.

281. Har en Fordringshaver Sjøpanteret i flere Panter, kan han holde sig til ethvert af dem for sin hele Fordring.

281. Har borgenär panträtt i flere panter, hafte enhver af panterna för gäldens hela belopp.

## Danish Text.

the voyage for the requirements of the ship or cargo; but the creditor has instead a right to security in the purchase money, as long as the latter has not been paid.

**278.** With respect to the mortgagee's right to reimburse himself in the amount of compensation due for loss or damage to the cargo, or which are due to the cargo according to the rules for general average, similar regulations are applicable as those given in § 270 with reference to right to security in a ship. Neither in this case is compensation which is to be paid by an underwriter, liable instead of the mortgaged object.

**279.** If the cargo-owner has received any portion of the purchase money or of amounts of compensation, in which a mortgagee was entitled to reimburse himself, pursuant to §§ 277 and 278, the cargo-owner becomes personally responsible for the maritime claim according to the same regulations as are laid down in §§ 272 and 274 with regard to the ship-owner.

The rule laid down in § 272, part 2nd, shall also be applicable in case the amounts have been paid to the insolvent estate of the cargo-owner.

**280.** If the master delivers goods upon which there is a maritime claim, without the creditor's consent, the master as well as the receiver, in case the latter was aware of the lien at the time of delivery, shall be answerable for the payment of such claim. If, at the time of delivery, it is proved that the cargo was not sufficient to meet the claim, the responsibility does not exceed the value of the cargo.

**281.** If a creditor has a right to security in several sureties, he may seize on each of these for the whole amount of his claim.

## Norwegian Text.

voyage for the requirements of the ship and the cargo, in which case the creditor shall in lieu thereof have a lien upon the purchase amount provided it has not been paid over.

**278.** In respect to the right of the holder of a maritime lien to recover payment from the amount of compensation due for damage or loss to the cargo, or which may be due to the cargo under the rules relating to general average, similar rules to those given in § 270 in respect to maritime liens on a ship shall apply. Compensation to be paid by an insurer shall not, either in this case, supply the place of the pledge.

**279.** If the owner of a cargo has received any portion of the purchase money, or compensation from which a creditor was entitled, according to §§ 277 and 278, to recover payment, the owner of the cargo shall be personally responsible for the claim under the maritime lien according to the same rules as are prescribed in §§ 272 and 274, concerning ship-owners.

The rules contained in the 2d. section of § 272, shall in like manner be applicable when the sums have been paid to the administrator of the estate of a bankrupt owner of cargo.

**280.** If goods subject to a maritime lien are delivered up by the master without the consent of the creditor, both the master and the receiver of the goods shall, if he was at the time of the delivery aware of the incumbrance, be responsible for the satisfaction of the claim. If it is proved that at the time of the delivery the goods were not sufficient to satisfy the claim, such liability shall not exceed the value of the goods.

**281.** If a creditor holds a maritime lien on several pledges, he may seek satisfaction in each one of them for payment of his entire claim.

## Swedish Text.

goods shall cease. The same enactment shall apply where the goods are sold subsequent to, and by virtue of, a writ to satisfy a debt in a bankruptcy in the order enacted for the sale of goods on board, arrested by writ, but the creditors shall be entitled to a share in the purchase-amount, as stated in the Law of Attachment.

**278.** In case of any owner of cargo being entitled to compensation for goods lost or damaged, or should any goods have been sold during the voyage for the benefit of the ship, or for account of some other owner of cargo, the law enacted in Art. 270 respecting ships shall also apply as regards the creditor's right to the compensation due to the owner of the cargo. Compensation payable on the strength of an insurance effected cannot be claimed in lieu of the surety.

**279.** If any owner of cargo has received any compensation amount to which a creditor had such a right as stated in Art. 277 or Art. 278, the liability of the owners of the cargo to pay such claims shall be governed by the rules laid down in Arts. 272 and 274 with regard to the liability of owners of ships in similar cases.

Should any such compensation amount have been paid over, subsequent to the lodging of any petition to the Court to have the owner of the cargo declared bankrupt, the law as laid down in Art. 272 shall be in force.

**280.** Any master delivering to the disposal of the charterers, or consignees, and without the consent of the creditors, goods standing surety for any claim, shall be held liable for the payment of the said claim, such liability, however, not to exceed the value of the goods at the time of discharging. Should the consignee have been aware of the existence of the claim at the time of discharging, he shall incur the same liability in respect of any claim, for which he would not otherwise have been personally responsible.

**281.** If a creditor has the right of security in several sureties, each of the said sureties shall be liable for the whole amount of the debt.

Har han søgt Fyldestgørelse i et af dem for et større Beløb, end der forholdsvis faldt paa samme, kan baade den Ejer, som derved lider Tab, og den Sjøpanthaver, hvis Pant derved bliver utilstrækkeligt til hans Fyldestgørelse, holde sig til de øvrige Panter med samme Ret, som tilkom den Fordringshaver der har søgt Fyldestgørelse i det paagældende Pant, for saa stort Beløb, som hans Ejendom eller hans Pant har maattet udrede for meget.

Har han søgt Fyldestgørelse i et af dem for et større Beløb, end der forholdsvis faldt paa samme, kan baade den Eier, som derved lider Tab, og den Sjøpanthaver, hvis Pant derved bliver utilstrækkeligt til hans Fyldestgørelse, holde sig til de øvrige Panter med samme Ret, som tilkom den Fordringshaver der har søgt Fyldestgørelse i det paagældende Pant, for saa stort Beløb, som hans Eiendom eller hans Pant har maattet udrede formeget.

Tilhøre Panterne den samme Ejer, har den Fordringshaver, som har særlig Sjøpanteret i et søgt, fremdeles Ret til at holde det Beløb, hvorfor han ikke kan opnaa Dækning af sit Pant paa Grund af den deri søgte Fyldestgørelse; men, for saa vidt denne ikke gaar ud over, hvad der forholdsvis faldt paa hans Pant, staar han tilbage for dem, der maatte have Sikkerhedsret i de paagældende Værdier.

Pant, hvori Fyldestgørelse er sig til de andre Panter for hele

282. Sogsmaal til Fyldestgørelse af Søfordring, hvorfor der haves Sjøpanteret i Skib eller Fragt, kan efter Kreditors Valg anlægges mod Reder eller mod Skipper. Har anden Kreditor end Reder eller Skipper Sjøpanteret i Gods, kan Sogsmaal anlægges mod Skipperen.

282. Sogsmaal til Fyldestgørelse af Sjøfordring, hvorfor der haves Sjøpanteret i Skib eller Fragt, kan efter Kreditors Valg anlægges mod Reder eller Skibsfører. Har anden Kreditor end Reder eller Skibsfører Sjøpanteret i Gods, kan Sogsmaal anlægges mod Skibsføeren.

282. Borgenär, som har pant-rätt i fartyg eller frakt, må för utfående af sin fordran ur panten söka befälhafvaren eller redaren, hvilkendera han helst vill. Söker annan borgenär, än redare eller befälhafvare, för fordran, för hvilken gods i fartyg häftar, betalning ur godset, ege ock han rätt att söka befälhafvaren.

283. Fordringer, for hvilke Kreditor efter denne Lov alene kan holde sig til de Gjenstande, hvori han har Sjøpanteret, fortabes, naar ikke de gøres gjældende ved Sogsmaal inden efternævnte Tidsfrister:

283. Fordringer, for hvilke Kreditor efter denne Lov alene kan holde sig til de Gjenstande, hvori han har Sjøpanteret, fortabes, naar de ikke gjøres gjældende ved Sogsmaal inden efternævnte Tidsfrister:

283. Fordran, för hvilken gäldenär enligt denna lag häftar allenast med fartyg, frakt eller inlastadt gods, upphøre, om icke genom stämning eller lagsökning betalning sökes

for Bidrag til almindeligt Havari og til Omkostninger, derskulle fordeles efter

for Bidrag til almindeligt Havari og til Omkostninger, der skal fordeles efter lig-

för fordran å bidrag till gäldande af gemensamt havari eller af kostnad, som

ad § 283. De almindelige Præskriptionsbestemmelser, som ogsaa efter norsk Ret griber ind i de samme Tilfælde som efter D. og S., er temmelig forskjellige i de tre Lande. — I Danmark gjælder endnu Bestemmelsen i Landsloven af 1683, Bog 5, Kap. 14, Art. 4, hvorefter Præskription træder ind 20 Aar efter Fordringens Opstaaen, dog væsenslig modificeret ved Lov 22 December 1908, hvorefter en Række Krav foreldes 5 Aar fra Forfaldstiden. — I Norge begynder den almindelige Præskriptionsfrist efter Leven af 27 Juli 1896 altid først sit Lob fra Forfaldsdagen og udgjør i Regelen 10 Aar, men med Hensyn til Fordringer, som er opstaaet bl. a. af Ophold, Förtæring og Forpleining saavel som af Person- eller Godstransport, kun 3 Aar; er der udstedt Gjeldsbrev for Fordringen, indtræder imidlertid atter den 10-aarige Frist. — I Sverige er Præskriptionen ordnet ved kgl. Forordning af 4 Marts 1862; den almindelige Frist er her 10 Aar; den tager sin Begyndelse fra Gjeldsbrevets Udfærdigelse og ellers fra Fordringens Opstaaen.

Danish Text.

Norwegian Text.

Swedish Text.

If he has reimbursed himself from one of them for a greater amount than that for which the security in question was proportionately liable, both the owner who sustains a loss thereby and the maritime mortgagee whose security thereby becomes insufficient to meet his claim, may seize on the other securities with the same right as was due to the creditor, who has reimbursed himself from the security in question, for so great an amount as his property or his security has been obliged to pay in excess.

If he has sought recovery of his claim in one of them for a greater amount than would proportionately fall to its share, then both the owner who may suffer loss thereby, and the holder of a maritime lien whose pledge would thereby be of insufficient value to satisfy his claim, may seek satisfaction from the other pledges, with the same right as that held by the creditor who has sought satisfaction for his claim from the pledge in question, for so great an amount as that which may have been levied in excess on his property or his pledge.

If the securities belong to the same person, the creditor who has a special right to which another has reimbursed himself, has further a right to seize on the other securities which he cannot be discharged by his own security on account of the reimbursement effected; but in so far as the latter does not exceed the amount for which his security was proportionately liable, he must yield to those persons to whom the values in question have

security in a surety out of himself, has further a right to for the whole amount for which his security was proportionately liable, he must yield to those persons to whom the values in question have been given as security.

**282.** Action in order to recover payment for a maritime claim, for which there is a right to security in ship or freight, may, at the creditor's option, be brought either against the ship-owner or against the master. Should any creditor other than the ship-owner or the master have a right to security in the goods, action may be brought against the master.

**282.** Proceedings for the recovery of a claim for which a creditor has a maritime lien upon a ship or freight may be taken at the choice of the creditor by bringing an action against either the owner or the master. Any creditor, other than the owner of the ship or the master, holding a maritime lien upon cargo, may bring an action against the master.

**282.** A creditor having the right of security in ship or cargo, may sue, at his own option, either the master or the owners for the recovery of his claim out of the security. Should any creditor, other than the master or the owners, sue for the recovery out of the cargo of any claim for the payment of which the cargo on board is liable, such creditor shall likewise have the right to sue the master.

**283.** Claims for which a creditor, according to this Law, can only seize objects in which he has a maritime security, cease, should they not be sued for within the following limits of time:

**283.** Claims for which a creditor, in accordance with this Law, can only seek satisfaction in those items on which he holds a maritime lien, shall become void when not enforced by legal proceedings within the periods hereinafter mentioned, that is to say:

**283.** Any claim for which the debtor is liable only with ship, freight, or cargo on board, in conformity with this Law, shall cease, should not payment be sued for by summons or other legal proceedings within the following limits of time in the following cases, i. e.:

In the case of any claim for contribution towards the settlement for general average, or

Contributions to general average, and expenses which shall be apportioned according to

In the case of any claim for contribution towards the settlement of general average, or

*To § 283.* The general rules of prescription which also according to Norwegian law apply to the same cases as according to that of D. and S. are somewhat different in the three countries. — In *Denmark* the rule of the National Law of 1683, Book 5, Chap. 14, Art. 4, according to which prescription operates 20 years after the coming into existence of a claim, still applies, but largely modified by the Law of 22nd Dec. 1908, according to which a series of claims are prescribed in 5 years from the time of maturity. — In *Norway* the general period of prescription according to the Law of 27th July 1896 never commences running until the day of maturity, and as a rule is of 10 years' duration, but with regard to claims arising, for example, from lodging, board and maintenance, as well as those arising from the transport of persons and goods, the period is only 3 years; if a note of hand has been issued for the claim in question, the period of prescription is however again one of 10 years' duration. — In *Sweden* prescription is regulated by the Royal Ordinance of 4th March 1862; the general period is 10 years; it commences running from the issue of the note of hand or otherwise from the coming into existence of the claim.

## Dansk Text.

lignende Regler (jfr. §§ 161, 2det Stykke, og 218, 2det Stykke), inden et Aar fra Dispachens Datum;

for Erstatningskrav for bortkommen eller beskadiget Ladning inden et Aar fra Godsets Losning;

for alt andet Erstatningskrav inden 2 Aar efter, at Skaden fandt Sted;

for alle andre Sofordringer inden et Aar fra deres Fordragsdag.

Har Kreditor for nogen af de ovenfor nævnte Fordringer tilige Ret til at holde sig til Reder, Ladningsejer eller andre personlig, kommer paa denne hans Ret Lovens almindelige Præskriptionsregler til Anvendelse.

284. Den Skipper og Mandskab efter § 268 Nr. 2 tilkommende Sopanteret bortfalder, naar Fordringen ikke gores gjældende ved Sogsmaal inden et Aar fra den Dag, da deres Tjeneste ophørte. Har Kreditor ellers efter denne Lov Sopanteret i Skib, Fragt eller Ladning for nogen Fordring, for hvilken Skyldneren hæfter personlig, bortfalder Sopanteretten efter de i § 283 bestemte Terminer.

## Tolvte Kapitel.

## Om Forseelser i Tjenesten af Skipper og Mandskab m. v.

285. Tager en Skipper nogen i Tjeneste, som ham vitterligt allerede er forhyret til Tjeneste paa andet Skib, straffes han med Bøder fra 10 til 200 Kr.

286. Har Skipperen ikke om Bord et Eksempplar af denne Lov og af de i § 27 ommældte Reglementer og Forskrifter,

af Kap. 12 N. Den almindelige borgerlige Straffelov for Norge af 22 Mai 1902 har ophævet samtlige Straffelov og de ældre Speciallove, som angaar Skibsfarten og beslegtede Forhold (Søloven, Loven om Lodsvæsenet af 26 Mai 1897, om Skibsmandskabers Mønstring af 29 Juni

## Nordisk Sæet: Sølovene.

## Norsk Text.

nende Regler (jfr. §§ 161, andet Stykke og 218, andet Stykke), inden 1 Aar fra Dispachens Datum;

for Erstatningskrav for bortkommen eller beskadiget Ladning inden 1 Aar fra Godsets Losning;

for alt andet Erstatningskrav inden 2 Aar, efterat Skaden fandt Sted;

for alle andre Sjøfordringer inden 1 Aar fra deres Fordragsdag.

284. Den Skibsfører og Mandskabet efter § 268 Nr. 2 tilkommende Sjøpanteret bortfalder, naar Fordringen ikke gjøres gjældende ved Sogsmaal inden 1 Aar fra den Dag, da deres Tjeneste ophørte. Har Kreditor ellers efter denne Lov Sjøpanteret i Skib, Fragt eller Ladning for nogen Fordring, for hvilken Skyldneren hæfter personlig, bortfalder Sjøpanteretten efter de i § 283 bestemte Terminer.

## Tolvte Kapitel

er ophævet ved Indførelsesloven til den almindelige borgerlige Straffelov af 22 Mai 1902 § 2. Istedet derfor træder nu den almindelige borgerlige Straffelov af s. D. Kapitel 30 og 42, der lyder saaledes (Paragraftallene er Straffelovens):

## 30te Kapitel

af den almindelige borgerlige Straffelov af 22 Mai 1902.

## Forbrydelser i Sjøfartsforhold.

301. Den, som retsstridigt unddrager sig fra at tiltræde

## Svensk text.

skall fördelas efter enahanda grund, — inom ett år från dispachens dag;

för fordran å ersättning för bortkommet eller skadadt gods — inom ett år efter slutad lossning;

för fordran å ersättning i andra fall — inom två år från den dag, skadan timade;

för öfriga fordringar — inom ett år efter det fordringen förföll till betalning.

Eger för sådan fordran, som nu är sagd, borgenären rätt att jemväl hålla sig till redare, lastegare eller annan personligen, vare den rätt honom öppen inom tid, som i allmän lag stadgas.

284. Panträtt, som enligt 268 § tillkommer behållhafvare och besättning, upphøre, om icke fordringen utsökes inom ett år från den dag, tjensten ombord upphörde. Har borgenär eljest enligt denna lag i fartyg, frakt eller inlastadt gods panträtt för fordran, hvarför gäldenär är personligen betalningsskyldig, upphøre pant-rätten, der icke betalning sökes inom den i 283 § för hvarje särskildt fall utsatta tid.

## Tolfta kapitlet.

## Om brott i tjensten af befållhafvare och besättning.

285. Antager befållhafvare i redarens tjenst sjöman för tid, under hvilken denne, befållhafvaren veterligen, är förbunden att tjena å annat fartyg, straffes med böter, högst två hundra kronor.

286. Har befållhafvare icke ombord å fartyget ett exemplar af denna lag och af den i 27 § omförmälda spisordning,

## Danish Text.

## Norwegian Text.

## Swedish Text.

of any costs to be apportioned on the same principles (cfr. § 161, part 2nd, and § 218, part 2nd), within a year from the date of the average adjustment.

In case of claims for compensation for lost or damaged cargo, within a year from the discharging of the goods.

In the case of any other claim for compensation, within two years after the damage was sustained.

In the case of all other maritime claims, within a year from their day of payment.

If the creditor for any of the above mentioned claims has also the right to hold himself to the ship-owner, cargo-owner, or anybody else personally, the general regulations of the Danish Law as to prescription shall apply to this right of the creditor.

284. The right to security, due to master and crew, according to § 268 No. 2, becomes null and void, if the claim is not sued for within a year from the date of the termination of their service. If the creditor, according to this Law, otherwise has a right to security in ship, freight or cargo for any claim for which the debtor is personally liable, the right to security becomes null and void after the expiration of the terms fixed in § 283.

## Chapter XII.

### Of misconduct in the service of masters, crew etc.

285. If a master engages anybody who, to his knowledge, is already engaged on board another ship, he shall incur a penalty of from ten to two hundred crowns.

286. If the master has not on board a copy of this Law and of the regulations and instructions mentioned in § 27,

similar regulations (see the second sections of §§ 161 and 218); within 1 year from the date of the average statement;

Claims for compensation for cargo lost or damaged; within 1 year from the discharge of the goods;

All other claims for compensation; within 2 years after the time the damage occurred;

All other maritime claims; within 1 year from the date of the day on which their payment falls due.

284. The maritime lien possessed, in accordance with No. 2 of § 268, by the master and crew, shall become void when the claim is not enforced by proceedings at law within 1 year from the date of the day on which their services terminated. If a creditor has besides, in accordance with this law, a lien on the ship, freight or cargo for any claim for which the debtor is personally liable, the maritime lien shall lapse after the expiration of the periods fixed in § 283.

## Chapter XII.

*has been repealed by the Act of Introduction of the general Civil Criminal Law of 22nd May 1902 § 2.*

*In its stead the general Civil Criminal Law of the same date, Chapters 30 and 42, now operate, which read as follows (The numbers of the Articles are those of the Criminal Law):*

## Chapter XXX.

of the general Civil Criminal Law of May 22nd 1902.

### Offences in Maritime Matters.

301. Any person who unlawfully omits entering the

of any costs to be apportioned on the same principles; within a year from the date of the average adjustment.

In the case of any claim for compensation in respect of goods lost or damaged; within a year from the date of the completion of the discharging.

In the case of compensation otherwise claimed; within two years from the date the damage occurred.

In the case of any other claims than the above; within one year from the date of maturity of the said claim.

If the creditor is entitled, in respect of such claims as aforesaid, also to hold himself to the owners of the ship, or the consignees or to anybody else personally, he shall have the right to sue within the time enacted in the general laws of the country.

284. The right to security due to the master and the crew in conformity with Art. 268, shall cease, unless the claim is sued for within a year from the date of the termination of the service on board. If the creditor, in conformity with this Law, is otherwise entitled to security in ship, freight, or cargo on board for any claim for which the debtor is personally liable, such right to security shall cease, should payment not be sued for within the time stipulated in Art. 283 for each separate case.

## Chapter XII.

### Regarding Offences of Master and Crew in the performance of their duties.

285. Any master engaging a seaman in the service of the owners for any term during which, to the knowledge of the master, such seaman is engaged to serve on board another ship, shall incur a penalty not exceeding two hundred crowns.

286. Any master failing to keep on board the ship a copy of this Law and of the scale of provisions mentioned in

*To Chap. 12 N.* The general Civil Criminal Law of Norway of 22nd May 1902 has repealed all the penal provisions of previous special Laws which concern navigation and related matters (the Maritime Law, the Law concerning pilotage of 26th May 1897, concerning

straffes han med Bøder fra 5 til 100 Kr.

Samme Straf kommer til Anvendelse, naar Skipperen gør sig skyldig i Overtrædelse af de ham efter §§ 71 og 72 paahvilende Pligter.

287. Forsømmer Skipper, Styrmand eller Maskinmester, hvad der ifølge §§ 36—39 og 43, jfr. §§ 79 og 80, paaligger ham i Henseende til Skibsdagbogens Forelse, Bevaring og Forevisning, straffes han med Bøder fra 10 til 500 Kr.

Har Skipper, Styrmand eller Maskinmester ført falsk Skibsdagbog, eller med Forsæt tilintetgjort, understukket eller ulæseliggjort den, straffes han, for saa vidt ikke større Straf maatte være forskyldt, med Fængsel paa Vand og Brød eller Forbedringshusarbejde indtil 2 Aar.

288. Undlader Skipperen i de i § 40 omhandlede Tilfælde at gøre den der foreskrevne Anmeldelse, bliver, han at anse med Bøder fra 10 til 500 Kr.

289. Misbruger Skipperen den ham efter § 47, 2det Stykke, eller ifølge § 101 tilkommende

Tjeneste ombord paa Skib, straffes med Bøder eller med Fængsel indtil 4 Maaneder.

Paa samme Maade straffes den som indgaar Aftale om Tjeneste ombord paa Skib, naar Aftalen brydes paa Grund af ældre Forpligtelse, hvorpaa der er lagt Skjul.

Offentlig Forfølgning finder alene Sted efter fornærmedes Begjæring.

302. Den, som i Hensigt at unddrage sig fra videre Tjeneste ombord paa Skib, retsstridig forlader Skibet eller undlader at vende tilbage tilsammen, straffes for Rømning med Bøder eller med Fængsel indtil 8 Maaneder.

Voldes ved Rømningen Fare for Skibet eller for Menneskeliv kan Fængsel indtil 3 Aar anvendes.

Udenfor det i 2det Led omhandlede Tilfælde finder offentlig Paatale alene Sted efter fornærmedes Begjæring.

303. Paa samme Maade som i §§ 301 og 302 bestemt straffes den, der retsstridig bevirker eller medvirker til, at en anden undlader at tiltræde Tjeneste ombord paa Skib, eller til, at han i Hensigt at fratræde saadan Tjeneste forlader Skibet eller undlader at vende tilbage til samme.

Gjør nogen sig sædvansmæssig eller i vindesygt Oiemed

straffes med böter, högst ett hundra kronor.

287. Försummar befälhafvare hvad honom med afseende å dagboks förande eller uppvisande åligger, straffes med böter, högst två hundra kronor. Har befälhafvare, sig eller annan till nytta eller att dermed skada göra, fört falsk dagbok eller dagboken ändrat eller förstört, undanstuekit eller oläslig gjort, straffes med böter eller fängelse i högst sex månader eller straffarbete i högst två år; äro omständigheterna synnerligen försvårande, må tiden för straffarbetet höjas till fyra år.

Samma lag vare, der styrman eller maskinist så förbrutit sig, som i denna § sägs.

288. Försummar befälhafvare, när sjöolycka inträffat af sådan beskaffenhet, som i 40 § sägs, derom göra anmälan, på sätt i samma § stadgas, dömes till böter.

289. Missbrukar befälhafvare den i 101 § honom medgifna tvångs rätt, eller tilldelar

1888, Konsulatloven af 15 Juni 1878 og Lovene om Betingelserne for at være Skibsfører af 13 August 1857 og 4 Juni 1866 og for at være Styrmand og Maskinist af 26 Juni 1889) og samlet hele Emnet overensstemmende med Lovens Systematik i to Kapitler, det første (Kap. 30) om Forbrydelser og det andet (Kap. 42) om Forseelser i Søfartsforhold. Den norske Solov og de øvrige ovennævnte Love talte kun om Skibe, som er berettiget til at føre norsk Flag eller om den Skibsfart, som sker under norsk Flag; men ved Straffebudenæs Overflytning til den almindelige borgerlige Straffelev er der aabnet Adgang til at bringe Straffebestemmelserne til Anvendelse ogsaa paa fremmede Skibe og fremmed Skibsfart. Dette hænger sammen med Lovens almindelige Grundsætning om Staternes indbyrdes Solidaritet med Hensyn til deres Straffemyndighed og Forbrydelsernes internationale Karakter, jfr. den alm. borg. Straffelevs § 12, hvor denne Grundsætning har faaet sin legislative Form. Der findes dog i Straffelevens Kap. 42 (blandt Forseelserne) flere Tilfælde, hvor Straffebudet kun har Anvendelse i den norske Skibsfart, jfr. §§ 414, 416, 417, 419—421 og 426. En almindelig Revision af denne Del af den norske Straffelovgivning har tillige fundet Sted. — Bøderne i de i Kap. 30 (Forbrydelser) omhandlede Tilfælde er i Lovens almindelige Del fastsat fra 3 til 10000 Kroner og i de i Kap. 42 (Forseelser) omhandlede fra 1 til 5000 Kroner. Naar Fængselstraffen ikke er angivet at være paa Livstid, er den ligeledes begrænset fra 21 Dage til 15 Aar som Maximum og Heftestraften fra 21 Dage til 20 Aar; to Dages Hefte svarer til 1 Dags Fængsel. Efter Lovens § 29 Nr. 4 kan der som Tillægsstraf ved Siden af en af de ovennævnte tre Hovedstraffe anvendes Tab for en bestemt Tid af indtil 5 Aar eller for bestandig af Ret til at indehave Stilling som Skibsfører o. s. v.



Danish Text.

Norwegian Text.

Swedish Text.

he shall incur a penalty of from five to one hundred crowns.

The same penalty shall apply if the master is found guilty of transgression of the duties incumbent on him, according to §§ 71 and 72.

**287.** If any master, mate or engineer neglects his duties with respect to the keeping, preserving and exhibiting of the logbook, according to §§ 36—39 and 43, *cf.* §§ 79 and 80, he incurs a penalty of from ten to five hundred crowns.

If a master, mate or engineer has made false entries in the logbook, or intentionally destroyed, substituted or rendered the logbook illegible, he shall, in as far as he may not have incurred a heavier punishment, be punished with imprisonment on bread and water, or with hard labour for a period not exceeding two years.

**288.** If a master in the cases mentioned in § 40 neglects to report in the manner prescribed in the said paragraph, he shall be amerced in a fine of from ten to five hundred crowns.

**289.** If the master makes a bad use of the power vested in him according to § 47, part

service of a ship, shall be liable to a fine, or imprisonment not exceeding 4 months.

The same penalty shall be inflicted on any person who agrees to enter the service of a ship, when the agreement is broken owing to earlier engagements which have been kept secret.

Proceedings by the Public Prosecutor can only be taken when required by an injured party.

**302.** Any person who, in order to avoid serving longer on board, unlawfully quits the ship, or omits to return on board again, shall be liable, as a deserter, to fine, or imprisonment not exceeding 8 months.

If, by deserting, the ship or human life is exposed to danger, the offender may be sentenced to imprisonment not exceeding 3 years.

Except in the event referred to in the second section, proceedings by the Public Prosecutor will only be taken when required by the injured party.

**303.** The same penalty as is fixed in §§ 301 and 302 shall be inflicted on any person who unlawfully induces or assists another to refrain from entering the service of a ship, or to quit the ship in order to leave the ship's service, or to omit returning on board again.

If a person commits such an offence as a usual practice,

Art. 27, shall incur a penalty not exceeding one hundred crowns.

**287.** Any master neglecting his duties in respect of the keeping or exhibiting of the logbook, shall incur a penalty not exceeding two hundred crowns. If the master, either for his own benefit or for the benefit of any other person, or with malicious intention, makes any false entry or omission, or alters, destroys, conceals, or renders illegible any entry in any logbook, he shall be liable to a fine or to imprisonment for any period not exceeding six months, or to imprisonment with hard labour for any period not exceeding two years. In case the attending circumstances are of a specially grave nature, the penalty with hard labour may be increased to four years.

Any mate or engineer committing any of the offences mentioned in this Article, shall be punished as aforesaid.

**288.** Any master neglecting to report in the manner mentioned in Art. 40, whenever any of the accidents referred to in the said Article occur, shall be fined.

**289.** Any master committing any of the following offences shall be fined, unless by the

the engagement of seamen of 29th June 1888, the Law concerning the Consular Service of 15th June 1878 and the Laws concerning the conditions requisite for exercising the profession of a shipmaster of 13th August 1857 and 4th June 1866 and for exercising the profession of mates and engineers of 26th June 1889), and collected the whole subject in accordance with the system of the law in two Chapters, of which the first (Chap. 30) deals with crimes, and the second (Chap. 42) with offences connected with matters of maritime trade. The Norwegian Maritime Law and the other above-mentioned Laws only dealt with vessels which are entitled to sail under the Norwegian flag, or with the navigation which is carried out under the Norwegian flag; but by the transfer of the penal provisions to the general Civil Criminal Law it has been made possible to apply the penal provisions also to foreign vessels and foreign navigation. This is connected with the general principle of the law concerning the reciprocal solidarity of States in regard to their competency in penal matters and the international nature of crimes; *cf.* the general Civil Criminal Law § 12 where this principle has been couched in the form of law. There are, however, in Chap. 42 of the Criminal law (amongst the offences) several cases where the penal provision only applies to Norwegian navigation; *cf.* §§ 414, 416, 417, 419—421 and 426. A general revision of this part of the Norwegian legislation on criminal matters has also taken place. — The fines in the cases dealt with in Chap. 30 (crimes) in the general part of the Law have been fixed from 3 to 10 000 kroner, and those dealt with in Chap. 42 (offences) from 1 to 5000 kroner. When imprisonment is not indicated to be for life, it is also limited from 21 days to 15 years as a maximum, and arrest punishment from 21 days to 20 years; two days' arrest corresponds to one day's imprisonment. According to § 29 No. 4 of the Law, there may, as an additional punishment to one of the above-mentioned three principal punishments, be applied loss for a certain time not exceeding 5 years, or in perpetuity, of the right to exercise the profession of a shipmaster etc.

Myndighed, eller tildeler han nogen Sømand Straf uden lovlige Grund eller uden lagttagelse af den i § 103 foreskrevne Fremgangsmaade eller strengere Straf end i § 102 hjemlet, bliver han at anse med Bøder eller Fængsel, for saa vidt Gerningen ikke efter almindelige Strafferegler medfører større Straf.

Forholder Skipperen Mandskabet dets lovlige Kost, eller behandler han det med unødige Haardhed, straffes han med Bøder fra 10 til 500 Kr., for saa vidt Gerningen ikke efter almindelige Strafferegler medfører stærkere Straf.

290. Paafører Skipperen Reder, Ladningsejer, Forsikringsgiver eller andre, for hvis Tardet efter denne Lov paaligger ham at drage Omsorg, Skade ved Smugleri eller andet lovstridigt Forhold, bliver han at straffe med Bøder eller Fængsel, for saa vidt Gerningen ikke efter almindelige Strafferegler medfører større Straf.

Medtager Skipperen uden Reders Samtykke Gods, som udsætter Skib eller Ladning for Fare eller Risiko, anses han ligeledes med Bøder, fra 50 til 500 Kr., eller med Fængsel.

291. Forlader Skipperen Skibet uden betimelig og paa rette Maade at have opsagt sin Tjeneste, straffes han med Fængsel eller under formildende Omstændigheder med Bøder. Forlader han Skibet, naar dette er i Havsnød, uden at iagttage, hvad der er foreskrevet i § 43, eller under saadanne Omstændigheder, at det derved udsættes for øjensynlig Fare, kan Straffen stige til Forbedringshusarbejde.

292. Gaar en Skipper, uden at særlige Omstændigheder node ham dertil, til Søs med et Skib, der har saadanne Mangler paa Skrog, Maskine eller Udrustning, eller som er saa haardt eller utilbørlig lastet eller saa svagt bemannet, at han maatte

skyldig i Forbrydelsen, anvendes Fængsel indtil 5 Aar.

Offentlig Paatale finder alene Sted efter fornærmedes Begjæring, medmindre noget af de i 2det Led omhandlede Tilfælde foreligger, eller der ved den Rømning, hvortil Medvirkningen er ydet, er voldt Fare for Skibet eller for Menneskeliv.

304. Gaar en Skibsfører til sjøs med et Skib, der paa Grund af utilstrækkelig Udrustning eller Bemanning eller utilbørlig Belastning eller Feil eller Mangler ved selve Skibet er i saadan Stand, at Reisen er forbunden med Fare for Menneskeliv, eller gjør han Forberedelser, der utvetydig aabenbarer den Hensigt at gaa tilsjøs med saadant Skib, straffes han med Fængsel indtil 3 Aar.

Er ved Forbrydelsen Sjøskade, Tab af Menneskeliv eller betydelig Skade paa Legeme eller Helbred voldt, kan Fængsel indtil 8 Aar anvendes.

Paa samme Maade straffes Reder eller Reders Fuldmægtig, der retsstridig bevirker eller medvirker til, at Skibet gaar tilsjøs i saadan Stand som i 1ste Led omhandlet, eller at der gjøres saadanne Forberedelser dertil som der nævnt, eller som, skjønt vidende om, at saa skeer, pligtstridig undlader at hindre det.

305. Den, som mod bedre Vidende bevirker eller medvirker til, at offentlig Undersøgelse af et Skibs Sjødygtighed finder Sted, straffes med Bøder eller med Fængsel indtil 6 Maaneder.

Offentlig Paatale finder alene Sted efter fornærmedes Begjæring.

306. Efterlades ved et Skibs Afgang fra Land nogen medfarende uden gyldig Grund eller uden iagttagelse af den foreskrevne Fremgangsmaade, straffes den skyldige med Bøder eller med Fængsel indtil 4 Maaneder.

han sjöman bestraffning utan laga skäl eller utan iakttagande af den ordning, som i 103 § är föreskrifven, eller ålägger han strängare straff, än 102 § föranleder, eller missbrukar han den rätt att taga sjöman eller passagerare i förvar, som i 47 § omförmäles, eller förhåller han sjöman dess lagliga kost, eller behandlar han sjöman med onödigt hårdhet; straffes med böter, der ej gerningen etter allmän lag bör beläggas med strängare straff.

290. Gör befälhafvare sig skyldig till oreddighet mot redare, lastegare, försäkringsgivare eller annan, hvars rätt och bästa det enligt denna lag åligger honom att bevaka, straffes högst med straffarbete i två år, der ej gerningen efter allmän lag bör beläggas med strängare straff. För grof försummelse af deras rätt och bästa vare straffet böter eller fängelse i högst ett år.

291. Afviker befälhafvaren ur tjensten och öfvergifver det honom anförtrodda fartyg, straffes med straffarbete i högst två år eller fängelse eller, der omständigheterna äro synnerligen mildrande, med böter, ej under femtio kronor.

Lemnar befälhafvare fartyget när det är stadt i fara, utan att iakttaga hvad i 43 § stadgas eller hvad eljest åligger honom såsom god sjöman, straffes med böter, ej under ett hundra kronor, eller med fängelse.

292. Har befälhafvare, utan att nödtvång dertill föranledt, gått till sjös med fartyg, som haft sådana brister till skrof, maskin eller utrustning eller som varit så hårdt eller så olämpligt lastadt eller så illa bemannadt, att han bort inse,

## Danish Text.

second, or § 101, or if he punishes a seaman without lawful reason, or without observing the mode of proceeding prescribed in § 103, or if he inflicts a heavier punishment than stipulated in § 102, he is punished with fines or imprisonment, in as far as the offence does not entail a heavier punishment according to the general penal law of the Kingdom.

If the master withholds from the crew its lawful allowance, or treats them with unnecessary severity, he is amerced in a fine of from ten to five hundred crowns, in so far as the offence does not entail a heavier punishment according to the general penal law of the Kingdom.

**290.** If the master by smuggling or any other illegal conduct brings any loss upon the ship-owner, cargo-owner, underwriter or anybody else whose interests it is his duty to look after, he shall be punished with fines or imprisonment, in so far as the offence does not, according to the general penal law of the Kingdom, entail a heavier punishment.

If the master, without the consent of the owner, takes along with him goods, which expose ship or cargo to danger or risk, he is also amerced in fines of from fifty to five hundred crowns or punished with imprisonment.

**291.** If a master leaves the ship without having given notice in good time and in the right manner, he is punished with imprisonment, or, under extenuating circumstances, with fines. If he abandons the ship when in distress, without observing the provisions of § 43, or under such circumstances that it is thereby exposed to evident danger, the penalty can be increased to hard labour.

**292.** If a master, unless by force of special circumstances, proceeds to sea with a vessel in such a defective state as regards her hull, engines or equipment, or so heavily or improperly loaded, or so badly manned, that he ought to have

## Norwegian Text.

or with the object of obtaining an unlawful remuneration, imprisonment may be inflicted for a period not exceeding 5 years.

Proceedings at the instance of the Public Prosecutor will only be taken when required by the injured party, except in the instances referred to in the second section, or if, by desertion to which assistance has been given, the ship or human life is exposed to danger.

**304.** If a master proceeds to sea in a ship which is so insufficiently manned or equipped, or so unduly loaded, or so defective in itself that the voyage would involve risk of life, or if he makes preparations which unmistakably show his intention to proceed to sea in such a ship, he shall be punished by imprisonment for a term not exceeding 3 years.

If, on account thereof, a shipping casualty has been caused, or any person should lose his life or incur any grievous bodily harm, or should his health be seriously affected, imprisonment may be inflicted for a term not exceeding 8 years.

The same punishment shall be inflicted on the owners of the ship, or their agent, or any party accessory thereto, who unlawfully causes the ship to proceed to sea in such a condition as is described in the first section, or by whom such preparations are made as are referred to in the same section, or who, although knowing that such is being carried out, unlawfully refrains from preventing it.

**305.** Any person, or any accessory, who, contrary to his conviction, causes a public inquiry into the seaworthiness of a ship to be held, shall be liable to a fine, or imprisonment for a period not exceeding 6 months.

Proceedings at the instance of the Public Prosecutor will only be taken when required by the injured party.

**306.** If, on the departure of a ship from land, any of the persons conveyed by the ship are left behind without lawful reason, or without the measures prescribed being adopted, the offender shall be liable to fine, or imprisonment not exceeding 4 months.

## Swedish Text.

general laws of the country the offence would incur a heavier penalty i. e.: For any improper use of the compulsory power vested in him in conformity with Art. 101; for punishing a seaman without any lawful ground or without observing the rules laid down in Art. 103, or for inflicting heavier punishment than stipulated in Art. 102; for any improper use of his right to take in custody any seaman or passenger as mentioned in Art. 47; for reducing a seaman's lawful ration or treating him with unnecessary severity.

**290.** Any master, guilty of dishonesty towards the owners, underwriters, owners of cargo, or any other person or persons whose rights and interests he is in duty bound to watch and protect, in conformity with this Law, shall be liable to imprisonment with hard labour for any period not exceeding two years, unless by the general laws of the country the offence would incur a heavier penalty. Any gross neglect of such rights and interests as aforesaid shall incur the penalty of a fine or imprisonment for any period not exceeding one year.

**291.** Any master deserting the service and abandoning the ship entrusted to him, shall be liable to hard labour for any period not exceeding two years, or imprisonment, or shall incur a fine of not less than fifty crowns, in case of specially extenuating circumstances.

Any master abandoning the ship when in distress, without observing the provisions contained in Art. 43, or neglecting his duty as a good seaman, shall incur imprisonment, or a fine of not less than one hundred crowns.

**292.** Any master proceeding to sea, unless by force of circumstances, with a vessel in such a defective state, as regards her hull, engines or equipment, or so heavily or improperly loaded, or so badly manned, that he ought to have

kunne indse, at Rejsen er forbunden med aabenbar Livsfare for de om Bord værende, straffes han med Fængsel eller Bøder, for saa vidt hans Forhold ikke efter almindelige Strafferegler medfører større Straf.

Tilsidesætter Skipperen ellers de Pligter, som paahviler ham i Medfør af § 26, straffes han med Bøder fra 10 til 500 Kr.

De ovenfor fastsatte Straffe komme ogsaa til Anvendelse paa Redere eller andre, som paa disses Vegne tage Bestemmelse om Skibets Afgang, naar de ere ansvarlige eller medansvarlige for saadan Forbrydelse eller Forseelse.

Tilsidesætter Afladeren de Pligter, der paahviler ham i Medfør af de Forskrifter og Regler, som i Henhold til § 26 ved Anordning fastsættes for Indlading m. m. af Sprængstoffer og ildsfarlige eller ætsende Varer, straffes han med den i foranstaaende 1ste Stykke fastsatte Straf, saafremt han har maattet kunne indse, at Rejsen paa Grund af hans Forhold var forbunden med aabenbar Livsfare for de om Bord værende. Tilsidesætter Afladeren ellers de ham som anført paahvilende Pligter, straffes han med den i 2det Stykke fastsatte Straf. (*Lov af 10 December 1896, § 1 om Tillæg til Lov af 1ste April 1892.*)

293. Har Skipperen ved slet Sømandskab, Drukkenskab eller anden Pligtforsømmelse forvoldt Søskaade, straffes han, for saa vidt hans Forhold ikke efter sin Beskaffenhed maatte medføre større Straf, med Fængsel eller Bøder.

294. Forsømmer Skipperen at gøre, hvad der paaligger ham efter § 223 i Tilfælde af Sammenstød, straffes han med Fængsel eller Bøder, ikke under 100 Kroner.

Tilsidesættelse af de i Henhold til § 219 givne Regler for hvad der skal iagttages paa Skib til Undgaaelse af Sammenstød, straffes med Bøder fra 5 til 200 Kr. (*Lov af 10 December 1896, § 2 om Tillæg til Lov af 1ste April 1892.*)

Efterlades den medfarende uden gyldig Grund udenfor sit eget Hjemland, kan Fængsel indtil 2 Aar idømmes.

Offentlig Paatale efter Paragrafens 1ste Led finder alene Sted efter fornærmedes Begjæring.

307. En Skibsfører, der negter at skaffe nogen medfarende, hvad denne som saadan er berettiget til at erholde, eller tilsteder, at dette negtes ham, straffes med Bøder eller med Fængsel indtil 4 Maaneder.

Paa samme Maade straffes enhver anden Vedkommende, der gjør sig skyldig i saadan Negtelse.

Offentlig Paatale finder alene Sted efter fornærmedes Begjæring, eller hvor det kræves af almene Hensyn.

308. Med Bøder eller med Fængsel indtil 6 Maaneder straffes en Skibsfører, som

1. Straffer nogen underordnet uden gyldig Grund eller med en anden eller høiere Straf end lovhjemlet, eller
2. Uden Nødvendighed negter en medfarende Adgang til at henvende sig til Konsul eller anden vedkommende Myndighed, eller
3. Forovrigt behandler en medfarende paa en særdeles utilbørlig Maade eller tilsteder, at han af andre medfarende behandles saaledes.

Paa samme Maade straffes enhver anden i Tjenesten foresat, som behandler nogen ham underordnet paa en særdeles utilbørlig Maade.

Offentlig Paatale finder alene Sted efter fornærmedes Begjæring, eller hvor det kræves af almene Hensyn.

309. Fastholder en underordnet trods gjentagen Befaling sin Negtelse af skyldig Lydighed i Skibstjenesten, straffes han med Fængsel indtil 6 Maa-

att resan var förbunden med uppenbar lifsfara för dem, som voro om bord; straffes med fängelse i högst sex månader eller böter från och med tjugufem till och med ett tusen kronor. Åsidosätter befälhafvare annorledes de skyldigheter, som enligt 26 § åligga honom, straffes med böter. Vålås genom åtgärd eller försummelse, som nu sagts, skada, må till fängelse i högst ett år dömas der ej gerningen efter allmän lag bör beläggas med strängare straff.

Lika med befälhafvare straffes redare eller annan, som å redares vägnar haft befattning med fartyget, der han uppsåtligt förledt befälhafvaren till sådan förbrytelse eller med råd eller dåd densamma främjat.

293. Är befälhafvare genom vårdslöshet eller försummelse i tjensten på annat sätt, än i 292 § sägs, vållande till sjöolycka, straffes med böter eller med fängelse i högst ett år, der ej gerningen efter allmän lag bör beläggas med strängare straff.

294. Uraktlåter befälhafvare något af hvad enligt 223 § åligger honom att efter sammanstötning iakttaga, straffes med böter, ej under ett hundra kronor, eller med fängelse. Åro omständigheterna synnerligen försvärande, må till straffarbete i högst två år dömas.

## Danish Text.

perceived that the voyage would entail evident danger to the lives of those on board, he shall be liable to imprisonment or fines, in as far as his conduct does not, according to the general penal law of the Kingdom, entail a heavier unishment.

If the master, otherwise, neglects the duties incumbent on him, according to § 26, he is punished with a fine of from ten to five hundred crowns.

The penalties as above mentioned shall also apply to ship-owners or others, who on their behalf decide on the departure of the ship, if they are responsible or co-responsible for such crimes or offences as the aforesaid.

If the freighter neglects to fulfil the obligations which are incumbent on him according to the provisions and regulations which by Ordinance in accordance with § 26 are fixed for loading etc. of explosives and inflammable or corrosive goods, he is subject to the punishment fixed in the foregoing 1st paragraph, provided he must have foreseen that the voyage owing to his conduct entailed obvious danger to life for those on board. If the freighter in some other manner neglects the obligations incumbent on him, he is subject to the punishment fixed in the 2nd paragraph. (*Law of 10th December 1896, § 1 concerning a supplement to the Maritime Law of 1st April 1892.*)

**293.** If the master through want of nautical skill, drunkenness or any other dereliction of duty has caused a maritime casualty, he is, in so far as his conduct, according to the nature of the case, does not entail a heavier punishment, liable to a fine or imprisonment.

**294.** If the master neglects to do what is his duty according to § 223 in case of collision, he is punished with imprisonment or amerced in a fine, not less than a hundred crowns.

Omission to comply with the rules given according to § 219 regarding that which shall be observed on board vessels with a view to the avoidance of collisions, is punished with fines from 5 to 200 crowns. (*Law of 10th December 1896, § 2 concerning a supplement to the Maritime Law of 1st April 1892.*)

## Norwegian Text.

If such a person is left behind beyond his native country without lawful reason, imprisonment up to 2 years may be inflicted.

Proceedings at the instance of the Public Prosecutor under the 1st section of this paragraph (Article) will only be taken when required by the injured party.

**307.** Any master who denies to grant any person conveyed by the ship that which he as sailing in the vessel has the right to obtain, or who permits it to be denied him, shall be liable to fine, or imprisonment for a period not exceeding 4 months.

The same punishment shall be inflicted on any other person concerned who is guilty of such denial.

Proceedings at the instance of the Public Prosecutor will only be taken when required by the injured party, or when it is deemed necessary for public reasons.

**308.** A fine, or imprisonment not exceeding 6 months, shall be inflicted on any master who

1. Inflicts punishment on any of his inferiors without lawful reason, or inflicts another or a more severe punishment than that authorized by law, or who
2. Without necessity denies a person conveyed by the ship the opportunity of applying to a Consul or another authority concerned, or who
3. Otherwise treats any person conveyed by the ship in an excessively improper manner, or permits him to be treated in such a manner by any other person on board the ship.

The same punishment shall be inflicted on any other person in the ship's service entrusted with any other command on board who treats any of his inferiors in an extremely improper manner.

Proceedings at the instance of the Public Prosecutor will only be taken when required by the injured party, or when deemed necessary for public reasons.

**309.** If, in spite of repeated orders, any subordinate persists in refusing to show due obedience while in the ship's service, he shall be liable to

## Swedish Text.

perceived that the voyage would entail manifest danger to the lives of those on board, shall be liable to imprisonment for any period not exceeding six months or incur a fine of not less than twenty-five and not exceeding one thousand crowns. Any master otherwise neglecting any of the duties incumbent upon him in conformity with Art. 26, shall incur a fine. If any damage is sustained by any act or default as aforesaid, a penalty of imprisonment shall be inflicted for any period not exceeding one year, unless the general laws of the country inflict a heavier penalty in respect of any such act or default.

The owners, or any other person or persons connected with the ship on their behalf shall be liable to the same punishment as the master, should they have wilfully induced the master, or in any way advised or assisted him, to commit any of the offences aforesaid.

**293.** Any master causing an accident by carelessness or neglect of duty in any other manner than mentioned in Art. 292, shall be liable to a fine, or imprisonment for any term not exceeding a year, unless the general laws of the country inflict a heavier penalty for the offence.

**294.** Any neglect on the part of the master of any of the duties incumbent upon him subsequent to a collision, in accordance with Art. 223, shall entail the penalty of a fine of not less than one hundred crowns, or imprisonment. If the circumstances are of a specially grave nature, hard labour may be inflicted for any period not exceeding two years.

295. Vægrer Skipperen sig uden lovlig Forhindring ved i de Tilfælde, som omhandles i § 34, om Bord i Skibet at medtage Sofolk, straffes han med Boder fra 30 til 500 Kroner.

296. En Skipper, der har paadraget sig Ansvar efter §§ 287, 2det Stykke, 289 under særdeles skærpende Omstændigheder, 291, 2det Punktum, 292, 1ste Stykke, eller 293, kan derhos ved Dommen erklæres uværdig til at føre Skib. Virkningen af en saadan Dom standses ikke ved dennes Appel, men den kan, for saa vidt Forholdet henholder under § 293, efter Sagens Genoptagelse ophæves ved en ny Dom efter Forløbet af i det mindste et Aar, naar den paagældende tilvejebringer Oplysninger, der tale for, at Retten til at føre Skib igen kan betros ham.

297. Undlader nogen af Mandskabet at indfinde sig i Tjenesten til den bestemte Tid, straffes han med Boder fra 5 til 200 Kroner. Med samme Straf anses den, som forhyrer sig til Tjeneste paa et Skib for en Tid, hvori han paa Grund af en ældre Hyrekontrakt er forpligtet til at gøre Tjeneste paa et andet Skib.

298. Rømmer nogen af Mandskabet, straffes han med simpelt Fængsel fra 14 Dage til 3 Maaneder. Rømme flere af Mandskabet i Forening eller efter foregaaende Aftale, bliver efter Omstændighederne længere Tids simpelt Fængsel eller Fængsel paa Vand og Brod at anvende.

Rømmer hele Mandskabet eller den største Del af samme, eller sker Rømning under saadanne Omstændigheder, at Rømningsmændene maatte kunne indse, at Skibet derved udsættes for Fare, kan Straffen endogså stige til de højere Grader af Fængsel paa Vand og Brod eller til Forbedringshusarbejde i 1 Aar.

neder. Under særdeles formildende Omstændigheder kan Boder anvendes.

Offentlig Paatale finder alene Sted efter fornærmedes Begjæring.

310. Undlader en underordnet at vise sin foresatte i Skibstjenesten skyldig Lydighed under saadanne Omstændigheder, at derved Fare voldes for Skib eller Menneskeliv, straffes han saavel som enhver, der medvirker dertil, med Fængsel indtil 2 Aar.

311. Undlader flere af Mandskabet efter fælles Aftale at vise skyldig Lydighed ligeoverfor en i Skibstjenesten foresats Befaling, straffes Forlederen og Anføreren med Fængsel indtil 2 Aar og enhver, der forøvrigt deltager i eller medvirker til Ulydigheden, med Fængsel indtil 6 Maaneder. Under særdeles formildende Omstændigheder kan Boder anvendes.

Vises Ulydigheden under saadanne Omstændigheder, at derved Fare voldes for Skib eller Menneskeliv, straffes Forlederen og Anføreren med Fængsel indtil 5 Aar og de øvrige skyldige med Fængsel indtil 3 Aar.

312. Forsøger flere paa et Skib medfarende i Forening ved voldsom eller truende Adfærd retsstridig at berøve Skibsforeren Førelsen af Skibet, eller forsøger de i Forening ved voldsom eller truende Adfærd retsstridig at tvinge ham til at foretage eller undlade en Tjenestehandling, straffes Forlederen og Anføreren med Fængsel fra 6 Maaneder indtil 6 Aar og de andre Deltagere med Fængsel fra 4 Maaneder indtil 4 Aar.

Under særdeles formildende Omstændigheder kan kortere Tids Fængsel anvendes.

Opgiver nogen af egen Drift eller paa foresats Befaling sit forbryderske Forhold, forinden dettes Hensigt er naaet, straffes han, om han er Forleder eller Anfører, med Fængsel indtil 3 Aar og ellers med Fængsel indtil 6 Maaneder.

295. Väger befälhafvare utan lagligt hinder att i sådant fall, som i 34 § omförmåles, å sitt fartyg medtaga sjöfolk, straffes med böter.

Lag samma vare, der befälhafvare i fall, som 100 § omförmåler, underlåter att ställa sig till efterrättelse mönstringsförrättarens eller konsulns beslut.

296. Befälhafvare, som så förbrutit sig, som i 287, 289, 290, 291, 292, 293 eller 294 § sägs, må, der omständigheterna äro synnerligen försvärande, för viss tid eller för alltid dömas förlustig sådan rättighet att föra fartyg, för hvars utöfvande särskilda villkor äro stadgade.

297. Underlåter sjöman att inställa sig i tjenst i vederbörlig tid, straffes med böter, högst femtio kronor. Tager sjöman hyra å fartyg för tid, under hvilken han på grund af äldre hyresafstal är pligtig att tjena å annat fartyg, straffes med böter, högst två hundra kronor.

298. Rymmer sjöman ur tjensten, straffes med fängelse i högst tre månader. Rymma flere af besättningen i förening eller efter föregående aftal, dömas till fängelse i högst sex månader. Rymmer hela besättningen eller största delen deraf, eller sker rymning under sådana omständigheter, att rymmare bort inse, att fartyget till följd af rymningen utsattes för fara, må till fängelse i högst ett år eller till straffarbeto på lika tid dömas.

## Danish Text.

**295.** If the master, without sufficient excuse, in the cases mentioned in § 34 refuses to give a passage to seamen on board his ship, he shall be amerced in a fine of from thirty to five hundred crowns.

**296.** Any master who has incurred responsibility under §§ 287, part 2nd, 289 under especially aggravating circumstances, § 291, 2nd point, 292, 1st part, or 293, can, besides, in the judgment be declared unworthy of commanding a ship. The effect of such judgment is not affected by the appeal of the judgment, but can, in as far as the matter comes within § 293, after the re-assumption of the case in question, be rendered invalid by a new judgment after the expiration of at least one year, provided that the person in question procures information, which pleads in favour of his being again intrusted with the right to command a ship.

**297.** If any of the crew neglects to join the ship at the appointed time, he shall incur a fine of from five to two hundred crowns. He who ships himself on board a ship for a period during which he, in virtue of a previous agreement, is bound to serve on board another ship, shall incur the same penalty.

**298.** If any of the crew deserts, he is liable to ordinary imprisonment of from fourteen days to three months. If several of the crew desert conjointly or according to any previous agreement, they shall, according to circumstances, be sentenced either to ordinary imprisonment for a longer period or to imprisonment on bread and water.

Should the whole or the majority of the crew desert, or should the desertion take place under such circumstances that the deserters ought to have comprehended that the ship thereby is exposed to danger, the penalty can be increased to the higher degrees of imprisonment on bread and water, or to imprisonment with hard labour for a year.

## Norwegian Text.

imprisonment for a term not exceeding 6 months. Under extremely extenuating circumstances a fine may be inflicted.

Proceedings at the instance of the Public Prosecutor will only be taken when required by the injured party.

**310.** If a subordinate omits to obey the lawful commands of any of his superiors on board, under circumstances in which the ship or human life would be thereby exposed to danger, he, as well as any accessory, shall be liable to imprisonment not exceeding 2 years.

**311.** If, according to mutual arrangement, several members of the crew omit to obey the lawful orders of any of their superiors on board, the instigator and the leader shall be liable to imprisonment for a period not exceeding 2 years, and any person who, moreover, partakes in or encourages the disobedience shall be liable to imprisonment for a term not exceeding 6 months. Under extremely extenuating circumstances a fine may be inflicted.

If such disobedience is committed under circumstances in which the ship or human life would be exposed to danger, the instigator and the leader shall be liable to imprisonment for a term not exceeding 5 years, and the rest to imprisonment for a period not exceeding 3 years.

**312.** If several of the persons conveyed by a ship attempt jointly, by violent or menacing acts or by refusing obedience, to unlawfully deprive the master of the command of the ship or to unlawfully compel him to perform or omit any official service, the instigator and the leader shall be liable to a term of imprisonment from 6 months up to 6 years, and the rest to imprisonment from 4 months up to 4 years.

Under extremely extenuating circumstances imprisonment for a shorter period may be inflicted.

If, either voluntarily or at the command of any of his superiors, a person desists from his criminal intention prior to its object being achieved, he shall be punished by imprisonment for a period not exceeding 3 years, if he is instigator or leader, otherwise to imprisonment not exceeding 6 months.

## Swedish Text.

**295.** Any master refusing, without lawful cause, to receive on board his ship and to give a passage to any seaman in any of the cases referred to in Art. 34, shall be liable to a fine.

Any neglect on the part of the master to conform to the decision of the Consul or the Shipping Master in any of the cases mentioned in Art. 100, shall be punished as aforesaid.

**296.** Any master guilty of any of the offences mentioned in Arts. 287, 289, 290, 291, 292, 293 or 294 shall, if the circumstances attending are of a specially grave nature, be sentenced to forfeit for a certain time or for ever such rights to command a ship as are dependent upon special qualifications.

**297.** If any seaman neglects to join the ship in proper time he shall incur a fine not exceeding fifty crowns. Should any seaman engage on board a ship for any term during which he is bound to serve on board another ship on the ground of a previous agreement, he shall be liable to a fine not exceeding two hundred crowns.

**298.** Any seaman deserting shall be liable to imprisonment for any period not exceeding three months. If several of the crew, jointly, or in accordance with any previous compact, desert the ship, they shall be sentenced to imprisonment for any period not exceeding six months. Should the whole or the majority of the crew desert, or should the desertion take place under such circumstances that the deserter ought to have perceived that the ship, owing to the desertion, would be exposed to danger, he shall be liable to imprisonment with or without hard labour for any period not exceeding one year.

Vender en Rømningsmand frivillig tilbage for Skibets Afgang fra det Sted, hvor Rømningsmand skete, kan Straffen for ham under iøvrigt formildende Omstændigheder nedsættes til Bøder fra 10 til 400 Kroner.

299. Den, som rømmer med Hyre, straffes som for Bedrageri, hvad enten han havde tiltraadt sin Tjeneste i Skibet eller ikke, medmindre det efter Omstændighederne maa antages, at han ikke har haft til Hensigt at tilegne sig det øppebaarne, men endnu ikke fortjente Hyrebeløb.

300. Den Somand, som er fraværende ved Skibets Afgang, eller som uden Tilladelse eller ud over givne Tilladelse udblever mere end 24 Timer, anses som Rømningsmand, naar det ikke efter Omstændighederne maa antages, at han ikke har haft til Hensigt at unddrage sig sin Tjeneste.

301. Forlader nogen af Mandskabet Skibet, naar det er stedt i Fare, uden at iagttage, hvad der er foreskrevet i § 78, 2det Stykke, eller hvad der ellers paaligger ham som god Somand straffes han med Bøder eller simpelt Fængsel.

302. Have Sofolk i Henhold til § 87 begært Besigtigelse af Skibet, og det ved denne findes, at Angivelsen om Skibets Usodygtighed savner al rimelig Grund, straffes de med Bøder fra 50 til 500 Kroner eller med Fængsel.

303. Sætter en Somand sig op imod Skipperen eller den, som i hans Sted fører Befalingen eller nægter ham Lydighed, uden dog at gøre sig skyldig i Vold eller Trussel om saadan, straffes han med Bøder fra 10 til 500 Kroner, simpelt Fængsel eller under skærpende Omstændig-

313. Den, som, i Hensigt retsstridig at berøve Skibsføreren Førelsen af Skibet, bevirker eller medvirker til, at flere medfarende i Forening gjør sig skyldig i voldsom eller truende Adfærd eller negter Lydighed, eller som, i Hensigt retsstridig at tvinge Skibsføreren til at foretage eller undlade en Tjenestehandling, bevirker eller medvirker til, at de gjør sig skyldige i voldsom eller truende Adfærd, straffes, om han er Forleder, med Fængsel indtil 6 Aar og ellers med Fængsel indtil 4 Aar.

314. En Skibsfører, som i Havsnød eller under anden Fare enten uden Nødvendighed opgiver Skibet eller forlader det, uagtet hans Tilstedeværelse endnu er paakrævet, straffes med Fængsel indtil 1 Aar.

Med Fængsel indtil 6 Maaneder straffes den af Mandskabet, som i Havsnød eller under anden Fare uden Skibsføreren Tilladelse forlader Skibet for denne.

315. Undlader en Skibsfører i Tilfælde af, at hans Skib har stødt sammen med andet Fartøj (Skib eller Baad), at yde Fartøiet eller de paa samme værende Personer den Hjælp, som paa Grund deraf maatte tiltrænges, og hvortil han uden særlig Fare for eget Skib og de der ombordværende er istand, straffes han med Fængsel indtil 1 Aar.

316. Har en Skibsfører, Styrmand eller Skibsmaskinist gjort eller tilladt, at der er gjort nogen usand Anførsel i Dagbog eller anden Optegnelse, der i Henhold til Lovens Paabud føres af ham eller under hans Opsyn, straffes han med Fængsel indtil 2 Aar. Under særdeles formildende Omstændigheder kan Bøder anvendes.

#### 42de Kapitel

af den almindelige borgerlige Straffelov af 22 Mai 1902.

### Forseelser i Sjøfartsforhold.

414. Fører en Skibsfører eller Reder sig mod den norske Lovgivnings Bestemmelser om

Vänderrymmare frivilligt tillbaka innan fartyget afgått från den ort, der rymningen skedde, eller äro omständigheterna eljest synnerligen mildrande, då må till böter dömas.

299. Hvar, som förleder sjöman att rymma eller med råd eller dåd främjar rymningen, straffes med böter eller med fängelse i högst tre månader.

300. Underlåter sjöman, som immönstrats å fartyg, att inställa sig ombord före fartygets afgång från den ort, der resan börjar, eller blifver sjöman borta från skeppsbord mer än tjugufyra timmar utan lof eller utöfver erhållet lof, straffes såsom rymmare, der ej af omständigheterna pröfvas, att han icke haft för afsigt att afvika ur tjänsten.

301. Öfvergifver sjöman fartyget när det är stadt i nöd, utan att iakttaga hvad 78 § stadgar eller hvad eljest åligger honom såsom god sjöman, dömes till böter från oeh med femtio till oeh med tre hundra kronor eller till fängelse i högst ett år.

302. Har sjöman påkallat besigtning af fartyg, på sätt i 87 § sägs, oeh finnes vid företagen besigtning, att uppgiften om fartygets bristande sjövärdighet saknat rimlig grund, dömes till böter, ej under femtio kronor, eller till fängelse i högst två månader. Har sjömannen härvid handlat i uppsåt att bereda sig eller annan fördel eller att göra skada, må till straffarbete i högst två år dömas.

303. Sätter sig sjöman upp mot befälhafvaren och vägrar honom lydnad, straffes med böter eller fängelse i högst sex månader eller, der omständigheterna äro synnerligen försvärande, med straffarbete i högst ett år.



## Danish Text.

If a deserter, of his own account, returns before the ship leaves the place where the desertion took place, the penalty can, if the circumstances attending it are otherwise extenuating, be reduced to a fine of from ten to four hundred crowns.

**299.** He who deserts with his wages is punished as for fraud, whether he had already entered his service on board the ship or not, unless it, according to circumstances, is to be supposed that he has not had the intention of appropriating the wages received but not yet earned.

**300.** The seaman who is not present at the departure of the ship, or who without permission, or in excess of the leave granted, absents himself for more than 24 hours, is considered a deserter, unless it, according to circumstances, may be supposed that he has had no intention of deserting the service.

**301.** If any of the crew leaves the ship when in distress, without observing what is prescribed in § 78, sect. 2nd, or whatever else may be his duty as a good seaman, he is punished with a fine or ordinary imprisonment.

**302.** If seamen, in conformity with § 87, have requested a survey of the ship, and it is proved by the survey that there was no reasonable ground for the statement regarding the unseaworthiness of the ship, they are amerced in fines of from fifty to five hundred crowns or punished with imprisonment.

**303.** If a seaman sets himself against the master or the person who in his stead has the command, or refuses to obey him, without, however, being guilty of violence or threat of violence, he is punished with fines of from ten to five hundred crowns, ordinary

## Norwegian Text.

**313.** Any person who, in order to unlawfully deprive the master of the command of the ship, causes several of the persons on board to be jointly guilty of violent or menacing acts or refusing obedience, or is accessory therein; or any person who, with the object of unlawfully compelling the master to perform or neglect any official duty, causes them to be guilty of violent or menacing deeds, or is accessory thereto, shall be liable to a term of imprisonment not exceeding 6 years, if he is instigator, otherwise to imprisonment not exceeding 4 years.

**314.** Any master who, in the case of distress or other danger, either gives up the ship without necessity, or leaves the ship, notwithstanding that his presence is still required, shall be liable to a term of imprisonment not exceeding 1 year.

Imprisonment for a period not exceeding 6 months shall be inflicted on any member of the crew who, when the ship is in distress or other danger, quits the ship before the master without his authority.

**315.** Any master who, when a collision takes place between his own ship and some other vessel (ship or boat), neglects to render the other vessel or the persons on board it such assistance as may be required on account thereof, and what he can render without special danger to his own ship or those on board of it, shall be punished by imprisonment for a term not exceeding 1 year.

**316.** If a master, mate or engineer has made, or suffered to be made, any false entry in the log-book or any other record which, according to law is kept by him, or is under his charge, he shall be punished by imprisonment for a period not exceeding 2 years. Under extremely extenuating circumstances a fine may be inflicted.

## Chapter XLII.

of the general Civil Criminal Law of May 22nd 1902.

## Offences in Maritime Matters.

**414.** If a master or owner acts contrary to the provisions of Norwegian Law in respect

## Swedish Text.

If the deserter returns voluntarily before the ship leaves the port where the desertion took place, or if the circumstances attending are specially extenuating, the penalty of a fine may be inflicted.

**299.** Any person inducing a seaman to desert, or aiding and abetting him in the act of desertion, shall incur the penalty of a fine, or imprisonment for any period not exceeding three months.

**300.** Any seaman, lawfully engaged, neglecting to appear on board before the departure of the ship from the port where the voyage commences, or absenting himself from the ship more than twenty-four hours, without leave or in excess of the leave granted, shall be punished as a deserter, unless circumstances prove that he had no intention to leave the service.

**301.** Any seaman abandoning his ship when the vessel is in distress, and without complying with the prescription contained in Art. 78, or whatever else may be his duties as a good seaman, shall incur a penalty of not less than fifty and not exceeding three hundred crowns, or imprisonment for any period not exceeding one year.

**302.** If a seaman has requested a survey of the ship in the manner mentioned in Art. 87, and it is proved by the survey that there was no reasonable ground for the statement regarding the unseaworthiness of the ship, such seaman shall incur a penalty of not less than fifty crowns or imprisonment for any period not exceeding two months. If acting with the intention of benefiting himself or any other person, or of causing damage, the seaman may be sentenced to hard labour for any period not exceeding two years.

**303.** Any seaman guilty of mutiny and refusing to obey the master, shall be liable to a fine, or imprisonment for any period not exceeding six months, or, in case of specially grave circumstances, to hard labour for any period not exceeding one year.

heder Fængsel paa Vand og Brod.

Er det, efter at Skibet er indkommet i Havn eller for-  
tojet paa sikker Ankerplads, at  
en Somand har nægtet Skippe-  
ren eller den, der i hans Sted  
fører Befalingen, Lydighed, og  
det findes, at Anledningen der-  
til har været den, at Skipperen  
eller den, der i hans Sted fører  
Befalingen, har villet formene  
ham at forlade Skibet for hos  
rette Myndighed, at føre Klage  
over Skipperens Forhold eller  
over Skibets Tilstand, kan Strafe-  
fen under i øvrigt formildende  
Omstændigheder bortfalde.

304. Overfalder nogen af  
Mandskabet, om Bord eller i  
Land, Skipperen med Vold eller  
Trussel om Vold, straffes han,  
for saa vidt Gerningen ikke ef-  
ter sin Beskaffenhed maatte  
medføre større Straf, med  
Fængsel eller under formildende  
Omstændigheder, navnlig naar  
Skipperen ved utilbørligt For-  
hold selv har givet Anledning  
til Overfaldet, med Boder.

Sker saadant Overfald paa  
Skipperen eller anden Befalings-  
mand i Tjenesten, eller for at  
tvinge ham til at foretage eller  
hindre ham i Udforelsen af no-  
gen hans Tjeneste vedkom-  
mende Handling, eller i Anled-  
ning af en saadan, anses den  
skyldige, for saa vidt Gerningen  
ikke efter sin Beskaffenhed  
medfører større Straf, med  
Strafarbejde indtil 3 Aar eller  
under formildende Omstændig-  
heder med Fængsel, dog ikke  
under 2 Maaneders simpelt  
Fængsel.

305. Gør Mandskabet, eller  
nogen Del deraf, Mytteri for at  
bemægtige sig Skibets Førelse  
eller tvinge Skipperen eller den,  
som i hans Sted fører Befalin-  
gen, til at foretage eller undlade  
visse Foranstaltninger eller for  
i Forening at gøre voldsom Mod-  
stand imod nogen af Skipperen  
eller den, der i hans Sted fører  
Befalingen, i Tjenesten truffen  
Bestemmelse, men Deltagerne  
i saadant Mytteri, af egen Drift  
eller efter Opfordring, vende  
tilbage til Lydighed og Orden,  
uden at Vold paa Person eller  
Gode er bleven forøvet, straffes  
Anstifterne eller Anførerne med  
Fængsel eller med Forbedrings-  
husarbejde indtil 1 Aar, hvori-

Skibsmandskabers Monstring,  
om Hyrekontrakt og Afreg-  
ningsbog, om Anmeldelse,  
Fremmøde eller Forevisning af  
Dokumenter for nogen Myndig-  
hed eller om Afgivelse af æsket  
Oplysning til nogen saadan,  
straffes han med Boder.

Undlader han at optage Sjø-  
forklaring eller Thingsvidne,  
hvor saadant i norsk Lov er  
paabudt, straffes han med Bo-  
der eller med Fængsel indtil  
2 Maanedere.

415. Undlader en Skibsfører  
i Tilfælde af Sammenstød at  
give det andet Skibs Fører Op-  
lysning om Skibets Navn, Hjem-  
stedt, Bestemmelsessted og Ste-  
det, hvorfra det kommer, straf-  
es han med Boder eller med  
Fængsel indtil 3 Maanedere.

416. En Skibsfører eller Re-  
der straffes med Boder eller  
med Fængsel indtil 2 Maanedere,  
saafremt han forser sig mod,  
hvad der i Medfør af norsk Lov  
paaligger ham til Sikrelse af  
Skibets Sjødygtighed eller til  
Varetagelse af de ombordvæ-  
rendes Tarv.

417. En Skibsfører paa norsk  
Skib straffes med Boder eller  
med Fængsel indtil 2 Maanedere  
saafremt han

1. Undlader at iagttage, hvad  
der er foreskrevet i Tilfælde  
af, at Forbrydelser begaaes  
af nogen medfarende, eller
2. Uden gyldig Grund unddra-  
ger sig for at medtage om-  
bord Personer, for hvis Hjem-  
sendelse norsk Myndighed  
har at drage Omsorg, eller
3. Ikke retter sig efter de Af-  
gjørelser, som i Tvistigheder  
mellem ham og nogen under-  
ordnet træffes af vedkom-  
mende Myndighed i Tilfælde,  
hvor de er enten endelig eller  
forelobig bindende for ham.

418. Forser nogen sig mod  
de Forskrifter til Undgaelse  
af Sammenstød mellem Skibe  
eller angaaende Nødsignaler  
eller Lødsning, som han pligter  
at følge, straffes han med Boder.

419. En Skibsfører eller Re-  
der, som ikke iagttager den  
norske Lovgivnings Bestem-  
melser om Skibets Registrering  
eller om deres Merkning med  
Navn samt Hjemsted eller om

304. Öfverfaller någon af be-  
sättningen med våld eller hot  
om våld befälhafvaren i tjen-  
sten eller för att honom till  
någon tjänsteåtgärd tvinga el-  
ler derifrån hindra eller för att  
å honom för sådan åtgärd häm-  
nas, dömes till straffarbete i  
högst två år eller fängelse. Äro  
omständigheterna synnerligen  
mildrande, må till böter dömas.

305. Sätter sig sjöfolk till-  
sammans och lägger det uppsåt  
å daga att med förenadt våld  
bemäktiga sig ledningen af far-  
tyget eller tvinga befälhafvaren  
till någon åtgärd i tjensten eller  
att för sådan åtgärd å honom  
hämnas eller att i förening göra  
våldsamt motstånd mot åtgärd,  
som befälhafvaren anbefalt,  
men vända deltagarne i  
myteriet af egen drift eller på  
befälhafvarens befallning åter  
till lydnad eller ordning, utan  
att våld å person eller egendom  
blifvit öfvadt; då skola anstif-  
tare eller anförare dömas till  
fängelse i minst sex månader  
eller straffarbete från och med  
sex månader till och med två

Danish Text.

Norwegian Text.

Swedish Text.

prison or, under aggravating circumstances, with imprisonment on bread and water.

If it is after the ship has entered a harbour or been moored in a safe anchorage, that a seaman has refused to obey the master or the person who commands in his place, and it is found out that the reason has been that the master, or he who commands in his place, would forbid him to leave the ship in order to complain to the authorities of the conduct of the master or of the condition of the ship, the punishment can, under otherwise extenuating circumstances, be remitted.

**304.** If any of the crew on board or ashore assaults the master or threatens to assault him, he is, in as far as the offence does not, according to its nature, entail a heavier punishment, punished with imprisonment, or under extenuating circumstances, particularly should the master himself by improper conduct have occasioned the assault, with a fine.

If such assault is effected on the master or another officer whilst on duty, or in order to compel him to perform any act in connection with his duty or prevent him from any such act, or on account of any such act, the guilty person shall, in as far as the offence does not, according to its nature, entail a heavier punishment, incur the penalty of penal servitude for a period not exceeding three years, or under extenuating circumstances, not under two months ordinary imprisonment.

**305.** Should the crew or part of it mutiny in order to take the command of the ship, or to compel the master or the person who commands in his place to adopt or omit certain measures, or in order to resist conjointly any decision regarding the service taken by the master or the person who commands in his place, but the partakers in such mutiny of their own free will or on exhortation return to order and obedience, without any harm having been done to persons or property, the instigators or ringleaders are punished with imprisonment or hard labour for a period

to the hiring of seamen, the agreement and the account book, notification to, appearance before, or production of documents to any public Authority, or in respect to giving information, when demanded, to any such Authority, he shall be punished by fine.

If he omits to take a maritime declaration, or the evidence of witnesses when such is required by Norwegian law he shall be punished by fine, or imprisonment for a term not exceeding 2 months.

**415.** If, in the event of collision, the master neglects to give the master of the other ship the name and home port of his own ship, and of the port to which, or from which, it is bound, he shall be punished by fine, or imprisonment not exceeding 3 months.

**416.** Any master or owner shall be punished by fine, or imprisonment not exceeding 2 months, if he omits to observe the duties incumbent on him, in pursuance of Norwegian law, for the purpose of securing the seaworthiness of the ship, or of protecting the interests of those on board.

**417.** The master of a Norwegian ship shall be punished by fine, or imprisonment not exceeding 2 months, if he

1. Neglects to observe the regulations prescribed relative to offences committed by any of the persons on board,
2. Without lawful reason refuses to receive on board such persons whose sending home is incumbent on the Norwegian Authorities, or
3. Neglects to comply with the decisions made by the Authority concerned relative to disputes between himself and any of his subordinates, in cases when such decisions are, either finally or temporarily, binding on him.

**418.** Any person who acts contrary to the regulations for the prevention of collisions at sea, or concerning signals of distress, or pilotage, which it is his duty to comply with, shall be punished by fine.

**419.** Any master or owner who omits to observe the rules of Norwegian law respecting the registration of ships, or the branding of their name and home port, or relating

**304.** If any of the crew assaults or threatens to assault the master in the service, or in order to compel him to any certain act in the service, or to prevent him from any such act, or in order to revenge himself for any such act on the part of the master, he shall incur the penalty of hard labour for any period not exceeding two years, or imprisonment. In case of specially extenuating circumstances a fine may be imposed.

**305.** If seamen club together with a mutinous intention to take, by joint force, the command of the ship, or to compel the master to any action in the service, or to revenge themselves for any such action on the part of the master, or to resist, in conspiracy, by force, any action ordered by the master, and the partakers in the mutiny, of their own free will, or in accordance with the master's command, return to order and obedience, without any harm having resulted to person or property, then and in such case, the instigator or ringleader shall be sentenced to imprison-

mod de øvrige ikke blive at straffe.

Vende Deltagerne i Mytteriet ikke saaledes tilbage til Lydighed og Orden, men vise Trods imod Skipperens eller den i hans Sted trædende Befalingsmands Befalinger, straffes Anstifterne eller Anførerne, naar ingen Vold er foretaget, med Fængsel, ikke under 3 Maaneders simpelt Fængsel, eller med Forbedringshusarbejde indtil 2 Aar, og de øvrige Deltagere med Fængsel. Har Sammenrottelsen fundet Sted under Forhold som i § 303, 2det Stykke, ommeldt, kan Straffen nedsættes, dog ikke under Fængsel for Anstifterne.

Oves Vold mod Person eller Gods, straffes Anstifterne eller Anførerne, for saa vidt Gerningen efter sin Beskaffenhed ikke medfører større Straf, med Strafarbejde indtil 6 Aar og de øvrige Deltagere i Mytteriet med Fængsel, ikke under 3 Maaneders simpelt Fængsel, eller med Strafarbejde indtil 3 Aar.

306. Sømand, der ved Skodselshed, Uforsigtighed eller Forsømmelse i Tjenesten foranlediger Soulykke, straffes som i § 293 for Skipperen bestemt. Er den skyldige Styrmand eller Maskinmester, kan han tillige ved Dommen, med samme Virkning som i § 296 foreskrevet, erklæres for uskikket og uberettiget til at gøre Tjeneste som saadan.

307. Medtager nogen af Mandskabet uden Skipperens Vidende Gods, som udsætter Skib eller Ladning for Fare eller Ri-

Opslag ombord angaaende tilladt Passagerantal eller lignende, straffes med Boder.

Paa samme Maade straffes en Skibsfører paa norsk Skib, som ikke har ombord de fornødne Skibspapirer samt et Eksemplar af de angaaende Sjøfarten gjældende Love og øvrige Forskrifter.

420. En Fører af norsk Skib, som ved Anvendelsen af den ham i Loven tillagte Straffemyndighed tilsidesætter den foreskrevne Fremgangsmaade, straffes med Boder.

421. Undlader en Skibsfører, Styrmand eller Maskinist paa norsk Skib, hvad der med Hensyn til Førelsen af Dagbog eller anden Optegnelse eller sammes Opbevaring eller Indlevering er paabudt, straffes han med Boder eller med Fængsel indtil 2 Maanedere.

422. En Skibsfører, Styrmand, Maskinist eller Lods, som

1. Gjør sig skyldig i grov eller oftere udvist Uagtsomhed i Tjenesten ombord, eller
  2. Forsætlig eller uagtsomt beruser sig under saadan Tjeneste, eller naar denne forestaar,
- straffes med Boder eller med Fængsel indtil 3 Maanedere, hvorhos Retten til at fortsætte Næringen kan frakjendes ham.

423. Med Boder eller med Fængsel indtil 3 Maanedere straffes en Skibsfører, som

1. Ubertigtet fører norsk Flag, eller som i norsk Farvand fører noget Flag, hvortil han ikke er berettiget, eller
2. Ubertigtet driver Fragtfart mellem Steder paa den norske Kyst.

Paa samme Maade straffes den, som overdrager, udlæner eller paa anden Maade overlader norsk Nationalitetsbevis til Brug for et andet Skib end det, for hvilket Beviset er udfærdiget.

424. Den, som tjenestegjør som Skibsfører, Styrmand eller Maskinist uden at besidde de lovbestemte Egenskaber, straffes med Boder eller med Fængsel indtil 3 Maanedere.

år och annan deltagare till fängelse i högst sex månader.

Vända deltagarne i myteriet ej åter till lydriad och ordning, utan visa trotsighet mot befälhafvarens befällning, dömes anstiftare eller anförare till fängelse i minst ett år eller straffarbete från och med ett till och med fyra år och annan deltagare till fängelse i minst tre månader eller straffarbete från och med tre månader till och med två år.

Öfvas vid myteriet våld å person eller egendom, straffes anstiftare eller anförare med straffarbete från och med två till och med sex år och annan deltagare i myteriet med fängelse i minst sex månader eller straffarbete från och med sex månader till och med tre år.

För våld eller annan brottslig gerning, som vid myteri begås, varde ock gerningsmannen straffad, efter ty i 4 kap. 1 § strafflagen skils.

306. Är sjöman genom vårdslöshet eller försummelse i tjensten vållande till sjöolycka, straffes så, som i 293 § om befälhafvare sägs. Är den skyldige styrman eller maskinist, må han, der omständigheterna äro synnerligen försvärande, tillika förklaras för viss tid eller för alltid förlustig rättigheten att i dylik beställning nyttjas, der för sådan rättighets utfölvande särskilda vilkor äro stadgade.

307. Medtager någon af besättningen ombord utan befälhafvarens tillstånd gods, hvars förande utsätter fartyg

## Danish Text.

not exceeding a year, whereas the remainder shall not be punished.

Should the partakers of the mutiny fail to return to order and obedience, defying the commands of the master or the person commanding in his place, the instigators or ringleaders are, in case no violence has been committed, punished with imprisonment, not under three months' ordinary prison, or with hard labour for a period not exceeding two years, and the other partakers with imprisonment. If the conspiracy has taken place under such circumstances as mentioned in § 303, part 2nd, the punishment can be reduced, not, however, to less than imprisonment for the instigators.

Should violence be committed against any person or property, the instigators or ringleaders shall, in so far as the offence does not, according to its nature, entail a heavier punishment, incur penal servitude for a period not exceeding six years, and the other partakers in the mutiny imprisonment, not less than three months' ordinary prison, or penal servitude for a period not exceeding three years.

**306.** A seaman, who by carelessness, imprudence or neglect in the service causes any maritime casualty, shall incur the same penalty as is fixed for masters according to § 293. If the person guilty is mate or engineer, he may, moreover, by the judgment, with the same effect as stated in § 296, be declared unfit and not entitled to serve as such.

**307.** If any of the crew, without the master's knowledge, takes along with him goods which expose ship or

## Norwegian Text.

to bills to be posted on board concerning the lawful number of passengers, and the like, shall be punished by fine.

The same punishment shall be awarded to any master of a Norwegian ship who has not on board the necessary ship's papers and a copy of the laws and other regulations in force in respect to navigation.

**420.** Any master of a Norwegian ship who, in making use of his right to inflict penalties according to law, neglects to adopt the mode of proceedings prescribed, shall be punished by fine.

**421.** If a master, mate, or engineer of a Norwegian ship neglects to comply with the rules in force respecting keeping the log book or any other record, or its custody or delivery, he shall be punished by fine, or imprisonment for a term not exceeding 2 months.

**422.** Any master, mate, engineer, or pilot who

1. Is guilty of gross or repeated negligence in the performance of his duty on board, or
2. Wilfully or involuntarily intoxicates himself while on duty, or when he is about to undertake such duty, shall be punished by fine, or imprisonment for a term not exceeding 3 months, and, in addition thereto, he may be deprived of the right to continue his profession.

**423.** A fine, or imprisonment for a period not exceeding 3 months, shall be inflicted on any master who

1. Unlawfully carries the Norwegian flag, or who, in Norwegian waters, carries any flag which he is not entitled to carry, or
2. unlawfully is engaged in the carrying trade between ports on the Norwegian coast.

The same punishment shall be awarded to any person who transfers, lends, or otherwise delivers up a Norwegian certificate of nationality, for the use of any other ship than that for which the certificate is issued.

**424.** Any person serving as master, mate or engineer, without possessing the qualifications required by law, shall be punished by fine, or a term of imprisonment not exceeding 3 months.

## Swedish Text.

ment for any period not less than six months, or hard labour for any period not less than six months and not exceeding two years, and any other participator in the mutiny to imprisonment for any period not exceeding six months.

Should the participators in the mutiny fail to return to order and obedience, defying the commands of the master, the instigator or ringleader shall be sentenced to imprisonment for any period of not less than one year, or hard labour or penal servitude for any period of not less than one and not exceeding four years, and any other participator in the mutiny to imprisonment for any period of not less than three months, or hard labour for any period of not less than three months and not exceeding two years.

Should in the mutiny any person or property suffer violence, the instigator or ringleader shall incur penal servitude for any period not less than two and not exceeding six years, and any other participator in the mutiny the penalty of imprisonment for any period of not less than six months, or hard labour for any period of not less than six months and not exceeding three years.

For any outrage or other criminal act committed during the mutiny the doer shall be punished in accordance with Chap. 4, Art. 1, of the Penal Code.

**306.** Any seaman, causing any casualty by carelessness or neglect in the service, shall incur the same penalty as masters according to Art. 293. If the person guilty is a mate or engineer, and the circumstances be specially such as to aggravate his offence, he may, in addition, be declared to have forfeited, altogether, or for a certain period, his right to be employed in a similar capacity, should for the exercise of such rights certain qualifications be required.

**307.** Any seaman who, without the permission of the master brings on board any goods the carrying of which

siko, straffes han med Bøder fra 10 til 200 Kr. eller med Fængsel.

308. Har Somand paa anden Maade end ovenfor anført gjort sig skyldig i Forseelse i Tjenesten eller forbrudt sig mod god Orden og Skik, straffes han med Bøder fra 5 til 200 Kr.

309. Er en Somand, som har gjort sig skyldig i en Forseelse, anset med Straf derfor efter § 102, skal Retten, naar derom rejses Sag, tage skelligt Hensyn hertil ved Bestemmelsen af Strafansvaret, og Straffen kan i saadant Fald nedsættes under den ellers for Gerningen foreskrevne Straf eller endog aldeles bortfalde.

310. Bestemmelserne i §§ 285 til 296 komme ogsaa til Anvendelse paa den, der i Skipperens Forfald er traadt i hans Sted.

311. De Forseelser, som omhandles i §§ 285, 289, 1ste Stykke, 290, 291, 1ste Pkt., 297, 298, 301, 302, 303, 307 og 308, forfølges ikke af det offentlige, medmindre det begæres af den forurettede, Skipper eller Reder. Sager, i hvilke Straffen ikke kan overskride Bøder, saa og Sager efter Paragrafferne 291, 1ste Pkt., 298 og 302, behandles som offentlige Politisager, dog at der, for saa vidt der efter § 298 bliver Spørgsmaal om Idømmelse af Forbedringshusarbejde eller af Fængsel paa Vand og Brød, bør beskikkes den tiltalte en Forsvarer, naar han paa Forespørgsel erklærer, at han ønsker en saadan.

I Kjøbenhavn høre alle Sager efter dette Kapitel med Undtagelse af §§ 304—305 under Sø- og Handelsretten og uden for Kjøbenhavn under Soretterne.

312. Bøder, som idømmes i Medfør af Bestemmelserne i dette Kapitel, tilfalde Statskassen og blive i Mangel af Betaling at afsone efter de almin-

Paa samme Maade straffes Reder eller Skibsfører, som benytter noget uberettiget i nogen af disse Stillinger.

425. En Skibsfører, som uden skellig Grund foretager eller tilsteder andre at foretage nogen Handling, hvorved Skib eller Ladning udsættes for Opbringelse eller Beslaglæggelse, straffes med Bøder eller med Fængsel indtil 6 Maaneder.

Paa samme Maade straffes enhver medfarende, som uden Skibsførerens Tilladelse foretager saadan Handling som oven nævnt.

Offentlig Paatale finder alene Sted efter fornærmedes Begjæring.

426. Med Bøder eller under særdeles skjæpende Omstændigheder med Fængsel indtil 2 Maaneder straffes den underordnede ombord paa norsk Skib, som

1. Undlader i rette Tid at tiltræde Tjenesten eller ulovlig gaar fra Skibsbordet eller, naar han har Landlov, udbliiver mere end 6 Timer over den tilladte Tid,
2. Undlader saavidt muligt betimelig at anmelde Forfald, hvorved han bindes fra at tiltræde eller fortsætte Tjenesten,
3. Volder Fare ved Forsømmelighed under Tjenesten,
4. Forsætlig eller naagtsomt beruser sig under Tjenesten, eller naar denne forestaar,
5. Bortodslær eller paa anden utilborlig Maade omgaaes med Provianten,
6. Hemmelig bringer Personer eller egne eller andres Ting til eller fra Bordet,
7. Undlader at vise skyldig Lydighed ligeoverfor nogen af hans foresatte givne Befaling eller forleder en anden til saadan Ulydighed,
8. Gjør sig skyldig i grovt Brud paa den nogen foresat tilkommende Agtelse, eller
9. Paa anden Maade ombord eller i Tjenesten udviser et særlig slet Forhold.

Offentlig Paatale finder alene Sted efter Skibsførerens eller Rederens Begjæring.

eller last för äfventyr, straffes med böter eller fängelse i högst sex månader.

308. Har sjöman på annat sätt, än här ofvan är sagdt, gjort sig skyldig till förseelse i tjensten, eller har han brutit mot ordning och skick, straffes med böter.

309. Har sjöman, som begått brottslig handling, hvarom i 297—308 §§ förmåles, för samma handling undergått bestraffning enligt 102 §, skall rätten vid brottets bedömande derå fästa skäligt afseende; och må i ty fall, efter omständigheterna, straffet nedsättas under hvad eljest bort följa å gerningen eller ock alldeles bortfalla.

310. Hvad i detta kapitel stadgas angående brott af eller mot befälhafvare, gälle ock om brott af eller mot den, som är satt i befälhafvares ställe.

311. Brott, som i 285, 289, 290, 297, 298, 299, 300, 301, 302, 303, 307 eller 308 § omförmåles, må ej åtalas af allmän åklagare, utan att målsegande angifvit brottet till åtal; skall brottet straffas efter allmän lag, lände till efterrättelse hvad sådan lag stadgar i fråga om rätt till åtal.

312. I afseende å straff, hvar till efter denna lag dömes, gälle, der ej här ofvan är annorlunda stadgad, hvad allmän lag föreskrifver.

## Danish Text.

cargo to danger or risk, he shall be amerced in a fine of from ten to two hundred crowns, or punished with imprisonment.

308. If a seaman, in any other way than the aforesaid, is found guilty of any misconduct in the service, or in any breach of order and discipline, he is amerced in a fine of from five to two hundred crowns.

309. If a punishment, in accordance with § 102, has been inflicted on a seaman who has committed a misconduct, the Court shall, when the matter is laid before it, take this fact into due consideration in appointing the punishment, and the latter may in such case be reduced below the penalty prescribed for the misconduct in question, or even be altogether remitted.

310. The regulations, as laid down in §§ 285—296, shall also apply to the person who, in case of the master's essoin, has taken his place.

311. The offences mentioned in §§ 285, 289, 1st part, 290, 291, 1st point, 297, 298, 301, 302, 303, 307 and 308 are not prosecuted by the Government, unless at the request of the injured, master or ship-owner. Cases in which the penalty cannot exceed a fine, as well as cases under § 291, 1st point, 298 and 302, are dealt with as public police cases, yet in such manner that, in so far as there, according to § 298, is a question of sentencing to hard labour or to imprisonment on bread and water, an advocate should be appointed for the accused, if, on inquiry, he declares that he wishes to have an advocate.

In Copenhagen all cases under this chapter, with the exception of §§ 304 and 305, come within the jurisdiction of the Maritime and Commercial Court, out of Copenhagen within that of the Maritime Courts.

312. Fines which are imposed pursuant to the regulations of this chapter, are paid in to the treasury and shall, in case of non-payment, be work-

## Norwegian Text.

The same punishment shall be awarded to any master or owner who unlawfully employs any person in any such capacity.

425. Any master who, without lawful reason, performs, or permits any other person to perform, any act by which the ship or its cargo is exposed to capture or embargo, shall be punished by fine, or a term of imprisonment not exceeding 6 months.

The same punishment shall be awarded to any of those on board who performs such an act without the permission of the master.

Proceedings at the instance of the Public Prosecutor will only be taken when required by the injured party.

426. A fine, or, under extremely aggravating circumstances, imprisonment for a term not exceeding 2 months, shall be inflicted on any subordinate in a Norwegian ship who

1. Omits entering the service of the ship in due time, or unlawfully leaves the ship, or, when he has obtained permission, stays away more than 6 hours over the time granted;
2. Omits to report, in due time if possible, excusable absence, by which he is prevented from entering into or continuing in the service of the ship;
3. Occasions any danger through negligence while in service;
4. Wilfully or involuntarily intoxicates himself while on duty or when he is about to come on duty;
5. Wastes, or in some other improper manner, deals with the provisions;
6. Secretly brings on board, or removes from the ship, persons, or his own or other persons' effects;
7. Omits to obey the lawful orders of any of his superiors, or incites another to such disobedience;
8. Is guilty of any gross breach of the respect due to his superiors, or
9. In any other way while on board or on duty is guilty of extremely bad conduct.

Proceedings at the instance of the Public Prosecutor will only be taken when required by the master or owner.

endangers ship or cargo, shall incur a fine or imprisonment for any period not exceeding six months.

## Swedish Text.

endangers ship or cargo, shall incur a fine or imprisonment for any period not exceeding six months.

308. For any other offence in the service than mentioned above, or for any breach of order and discipline, the seaman shall incur the penalty of a fine.

309. If a seaman, having committed any of the offences mentioned in Arts. 297—308, has already been punished in accordance with Art. 102, the Court, when considering the offence, shall take the fact duly into consideration, and in such case, dependent on the circumstances, the punishment should either be reduced below that which would otherwise have been incurred, or be altogether withdrawn.

310. All and every enactment in this Chapter, having reference to offences committed by or against the master, shall likewise apply to offences committed by or against the master's substitute.

311. The offences mentioned in Arts. 285, 289, 290, 297, 298, 299, 300, 301, 302, 303, 307 or 308 cannot be prosecuted by the public prosecutor, unless the plaintiff has taken out a summons for the prosecution of the offence. If the offence is punishable by the general laws of the country, the enactments of the latter laws shall be observed as regards the right to prosecute.

312. With regard to punishments inflicted in conformity with this Law, the enactments of the general laws of the country shall be in force,

delige Regler om Boders Afsoning uden for kriminelle Sager.

Hvor der i dette Kapitel foreskrives Straf af Fængsel, kommer Bestemmelsen i almindelig borgerlig Straffelovs § 25 til Anvendelse.

### Trettende Kapitel.

## Om Lovens Omraade og Ikrafttræden samt ældre Lovbestemmelser Ophævelse.

313. Hvor der i nærværende Lov nævnes Riget, forstaas der ved Kongeriget, derunder ikke indbefattet Grønland, Island eller de vestindiske Kolonier.

I Lighed hermed forstaas Ordene Indland, indenlandsk og Danmark i Modsætning til Udland, Udlænding, udenlandsk, udenrigsk, fremmed og lign.

314. Med Undtagelse af Bestemmelserne i §§ 2, 3 og 5 samt § 10, 1ste Stykkes 2det Punktum, der først faa Virkning samtidig med den i § 2 omtalte ny Skibsregistreringslov, træder nærværende Lov, hvori der ved kongelig Anordning for Færøernes Vedkommende kan gøres de Lempelser, som ifølge de stedlige Forhold maatte anses fornødne, i Kraft den 1ste Januar 1893.

315. Fra samme Tidspunkt ophæves Danske Lov 4de Bog, 1ste til 7de Kapitel, Forordning 18de April 1787, Forordning om Skibsfolks Fortrinsret m. m. 28de December 1792, Forordning om Respondentia-Breve 19de December 1794, Plaka: 22de Januar 1828, Forordning 28de December 1836 og Reskript 21ste Maj 1785 for Bornholm, for saa vidt angaar de i samme indeholdte Bestemmelser angaaende Bjergelonnens Størrelse og Fastsættelse,

427. Er nogen straffet disciplinært af Skibsforen for en Forseelse, hvorfor Straffesag senere reises, kommer den udstaaede Straf til Fradrag ved Strafdmaalingen, saaledes at Straffen af denne Grund ogsaa kan nedsættes under de lovbestedte Lavmaal eller helt bortfalde.

### Trettende Kapitel.

## Om Rettergangsmaaden.

312. Civile Retssager, Skjon og Besigtelser, som angaar Gjenstande, der hen horer under denne Lov, eller som angaar Lodsvæsenet, bliver at behandle ved Sjøret; ligesaa Sjøforklaringer samt, forsaavidt der paa Stedet er fast Sjøret, ogsaa Thingsvidner til Brug under Retssag, som horer for Sjøret.

Sjøretten bestaar af den civile Underdommer eller, hvor der i Underretten er flere Dommere, en af disse som Formand og af to sagkyndige Sjøretsmedlemmer.

Hvis noget Krav, som efter foranstaaende Regler er Gjenstand for Sjørettens Paakjendelse, indtales i Bo, der staar under Skiftebehandling, og der opstaar Tvist derom, som ikke har særligt Hensyn til Skiftet, skal Skifteretten henvisse Tvisten til Paakjendelse ved Sjøret, saafremt dette enten forlanges af nogen af Parterne, eller Skifteretten paa Grund af Sagens Beskaffenhed finder det fornodent.

313. I hver Kjobstad ved Kysten skal der være fast Sjøret, hvis Virkekreds ogsaa kan udstrækkes til det tilgrænsende Landdistrikt inden de Grænser, som af Kongen bestemmes. Det samme gjælder for Ladestjerne ved Kysten; dog kan Kongen bestemme, at et eller flere Ladesteder henlægges under nærmeste Kjobstads eller Ladesteds faste Sjøret. Angaaende Sjøretsdistrikters Udstrækning bør i ethvert Tilfælde

### Trettonde kapitlet.

## Om laga domstol och rättegång i sjörättsmål.

313. Rådstufvurätt vare första domstol i mål, som skall bedömas efter denna lag.



Danish Text.

Norwegian Text.

Swedish Text.

ed out in conformity with the general rules for the working out of fines in non-criminal cases.

Wherever in this chapter imprisonment is prescribed as punishment, the regulations of § 25 of the general Penal Law are applicable.

**427.** If a disciplinary punishment has been inflicted on a person by the master for an offence, for which the offender may be subsequently prosecuted in a Court of law, the punishment sustained shall be taken into account when determining the penalty, in such a manner that, in consideration thereof, the penalty may be reduced below the minimum prescribed by law, or completely annulled.

where not otherwise stipulated above.

### Chapter XIII.

**Respecting the portion of the Danish Monarchy to which this Law is applicable, its coming into force, and the abrogation of former Laws.**

**313.** Wherever in the present Law the Kingdom is named, the Kingdom proper is meant, not comprising Greenland, Iceland or the Danish colonies in the West Indies.

In a like manner the words home-country, within the Kingdom, and Denmark must be understood in contradistinction from foreign country, foreigner, outlandish, out of the Kingdom, abroad, and so on.

**314.** With exception of the regulations in §§ 2, 3 and 5, as well as § 10, 2nd period of 1st part, which are first to be brought into effect at the same time as the new Law about the registering of ships, referred to in § 2, the present Law comes into force on the 1st of January 1893, but with respect to the Faroe Islands there can be made the concessions which, according to the local conditions, may be deemed necessary.

**315.** From the same date, Book IV, chapter 1st to chapter 7th, of the old Danish statute-book of 1683, the ordinance of the 18th of April 1787, the ordinance regarding the right of preference of seamen etc. of the 28th of December 1792, the ordinance respecting respondentia bonds of the 19th of December 1794, the ordinance of the 22nd of January 1828, the ordinance of the 28th of December 1836 and the rescript of the 21st of May

### Chapter XIII.

#### Legal procedure.

**312.** Civil actions at law, surveys and awards in connection with matters subject to this Law, or relating to pilotage, shall be dealt with by the Maritime Court, likewise all maritime declarations, and, provided there is a permanent Maritime Court at the place, the depositions of witnesses as evidence in actions subject to the jurisdiction of the Maritime Court.

The Maritime Court shall be formed by the judge of the Inferior Local Civil Court, or if there are several Judges of the said Inferior Court, of one of them, as President, and of two other members of nautical skill or knowledge.

If a claim which, according to the preceding rules, is subject to the jurisdiction of the Maritime Court, is brought against an estate under the administration of the Intestate Estate, Probate and Bankruptcy Court (Skifteret), and a disagreement arises thereon which does not exclusively concern the administration of the estate, the latter Court shall, if required by any of the parties, or if, on account of the nature of the case the Court thinks it necessary, refer the matter to the judgment of the Maritime Court.

**313.** In every town on the coast a permanent Maritime Court shall be established, the jurisdiction of which may likewise be extended to any adjoining rural district within such limits as the King may appoint. The same rule shall apply in respect to the creeks (Ladesteder) on the coast, but the King may decide that one or more such creeks shall be assigned to the jurisdiction of the permanent Maritime Court of the

### Chapter XIII.

**Respecting the proper Court and form of proceeding in maritime lawsuits.**

**313.** In cases to be judged according to this Law a Town Court shall be the first instance.

The same rule shall apply in respect to the creeks (Ladesteder) on the coast, but the King may decide that one or more such creeks shall be assigned to the jurisdiction of the permanent Maritime Court of the

Forordning 10de Januar 1840 med Undtagelse af de i §§ 2 og 5 indeholdte Betalingsregler, Plakat af 16de December s. A. indeholdende en Fortolkning af D. L. 4—5—1, Lov for Færoerne 22de November 1858, Lov om Disciplin i Handelsskibe 23de Februar 1866, Lov angaaende Forholdsregler for at forhindre Paasejling m. v. 21de Juni 1867, Lov om Forhyring af Søfolk 12te Maj 1871, Lov om Dag- og Nat signaler og Forholdsregler i Tilfælde af Skibes Sammenstød 23de Marts 1888 § 2.

Endvidere træde fra nævnte Tidspunkt ud af Kraft alle ældre Lovbestemmelser, som ere i Strid med nærværende Lov.

vedkommende Kommunestyres Erklæring paa Forhaand indhentes.

Antallet af faste Sjøretsmedlemmer for hvert Sjøretsdistrikt fastsættes af Kongen, efterat vedkommende Kommunestyres Erklæring er indhentet. Dog maa Antallet aldrig overstige 12.

Til faste Sjøretsmedlemmer kan kun vælges Mænd, der er over 30 Aar gamle og er kyndige i Sjøvæsen, Skibsfart, Skibsbygning, Varekundskab eller Assurancevæsen.

Valg afholdes hvert fjerde Aar. Det foretages i Forening af Stedes Magistrat, Formænd og Repræsentanter samt den civile Underdommer (hvis Underretten bestaar af flere Medlemmer, dens Formand) og derhos Formændene i Ladested eller Herred, som henholder under Sjørettens Omraade. Saa vidt muligt paases, at Kyndighed i samtlige ovennævnte Retninger findes repræsenteret inden Kredsen af de Valgte, og for hver enkelt anføres, i hvilken eller hvilke Retninger han ansees kyndig.

Samtidig vælges et saa stort Antal Varamænd, som Kongen bestemmer. Med Hensyn til Varamændene gjælder det samme som for de faste Medlemmer foreskrevet.

Enhver, der har forettet som fast Sjøretsmedlem i mindst 4 Aar, kan undslaa sig for at modtage Gjenvalg i saa lang Tid, som han sidst har forettet.

Opstaar i Mellemtiden mellem Valgene Ledighed, indtræder i den ledige Plads den først opførte af de Varamænd, der er i Besiddelse af den samme Kyndighed som det afgaaende Medlem.

Af de faste Medlemmer opnævner Underdommeren (hvis Underretten bestaar af flere Medlemmer, dens Formand) to Mænd for at tiltræde Retten i hvert forekommende Tilfælde. Opnævnelsen sker efter Tur, der ikke maa fraviges, medmindre Hensynet til den Slags Kyndighed, der udfordres i Sagen, nødvendigvis kræver det, eller den, som staar for Tur, ved Forfald eller af anden Grund er hindret fra at forrette. Er der ikke Adgang til at opnævne det fornødne Antal blandt de faste Medlemmer, foretages Opnævnelse blandt Varamændene under lagtagelse af samme Fremgangsmaade. Skulde i noget Tilfælde saa mange af de sagkyndige faste Medlemmer og Varamænd hindres fra at forrette, at Ret ei kan blive sat, eller skulde der udfordres anden Sagkyndighed end den, hvoraf de faste Sjøretsmedlemmer og deres Varamænd er i Besiddelse, sker Opnævnelse efter de i den følgende Paragraf foreskrevne Regler.

Saa vel i dette Tilfælde, som naar Turen er fraveget, skal Grunden meddeles i Retsbogen.

## Norsk Text.

314. Hvor der ikke er fast Sjøret, bliver Sjøretsmedlemmer at opnævne for hvert Tilfælde, naar der forekommer nogen Forretning eller Retssag, som hører under Sjøret. Opnævnelsen foretages af Underdommeren paa den Maade, som med Hensyn til Opnævnelse af Mænd med særegen Fagkyndighed er foreskrevet, dog saaledes, at Lov af 28de August 1854 § 20 ikke kommer til Anvendelse. Den bortfalder ikke, selv om Parterne er enige om, hvilke Mænd de ønsker, ligesom Dommeren ikke er bunden

## Svensk text.

314. I mom. När sjöförklaring af rätten upptages, skola två i sjöväsendet kunnige oeh erfarne män vara tillstädes för att såsom sakkunnige gå rätten tillhanda.

Desse sakkunnige utses af rätten före utgången af hvarje år, att under det följande året tjenstgöra. För att i deras ställe, vid inträffadt förfall, biträda skola tillika två suppleanter utses; uppstår hinder jemväl för dem, ege rätten för hvarje särskildt fall tillkalla andra.

## Danish Text.

1785 for the isle of Bornholm in so far as concerns its regulations regarding the amount and settlement of salvage; the ordinance of the 10th of January 1840 excepting the rules regarding payment, laid down in §§ 2 & 5, the ordinance of the 16th of December 1840 containing an interpretation of 4—5—1 of the old Danish statute-book, the Law for the Faroe Islands of the 22nd of November 1858, the Law on discipline on board merchant vessels of 23rd of February 1866, the Law on measures to be taken in order to prevent collision etc. of the 21st of June 1867, the Law on the engagement of seamen of the 12th of May 1871, the Law on day and night signals and on measures to be taken in case of collision of the 23rd of March 1888 § 2, are abolished.

From the said date are, moreover, abrogated all previous legal provisions which are at variance with the present Law.

## Norwegian Text.

nearest town or creek. The opinion of the local Municipal Authorities ought always to be obtained previous to determining the extent of the jurisdiction of the Maritime Court.

The number of the permanent members of the Maritime Court in each district shall be determined by the King after obtaining the opinion of the local Municipal Authorities. Their number must, however, never exceed twelve.

As permanent members of the Maritime Court there can only be elected persons who have completed their thirtieth year and are conversant with nautical affairs, or ship-building, or have a knowledge of goods or are conversant with insurance business.

Elections shall be held every fourth year by the Mayor (Magistrat), the Aldermen (Formænd) and the members of the Municipal Council (Repræsentanter), the Judge of the Inferior Civil Court, (or, if there are several members of the Court then its President), and the Formænd of the creeks or districts assigned to the jurisdiction of the Court. It ought to be observed, so far as is possible, that, within the body of persons so elected a knowledge is found of the different branches mentioned above, and the branch or branches in which each individual is considered expert ought to be stated.

At the same time, so many persons shall be elected to act as deputies, as the King may decide. The election of the deputies shall be subject to the rules prescribed for the permanent members.

Any person having officiated for at least four years as a permanent member of any Maritime Court, is entitled to decline reappointment for a term equal to that during which he last officiated.

In case of a vacancy occurring between the elections, the vacancy shall be filled by the deputy who as first on the list possesses the same skill and knowledge as the late member.

The Judge of the Inferior Court (if the Court consists of several members, then the President,) shall appoint two men from the body of permanent members to officiate at the Court in each particular case. The members shall officiate by turns, from which rule no exception may be made except when some particular branch of knowledge, required in the case, necessitates a deviation, or when the member who is to serve should by impediment or some other cause be prevented from attending. Should it not be possible to appoint the number required from the body of permanent members, the deputies shall be called upon to officiate, under the observance of the same regulations. If under any circumstances so many of the competent permanent members or deputies should be prevented from officiating that the Court cannot be held, or if other knowledge should be required in the case than that possessed by the permanent members of the Court or their deputies, the appointment shall be made in accordance with the rules prescribed in the following paragraph (Article).

Both in the foregoing instance, as well as when members have been appointed out of turn, the reasons shall be entered on the minutes of the Court.

## Swedish Text.

## Norwegian Text.

**314.** At places where there does not exist any permanent Maritime Court, a Court shall be formed by the appointment of members in each instance when any transactions or legal proceedings subject to the jurisdiction of a Maritime Court are to be undertaken. The appointment of members shall be made by the Judge of the Inferior Court in the manner prescribed for the appointment of men of special knowledge (experts) but in such a manner that the Law of 28th August 1854, § 20, shall not be applicable. Such

## Swedish Text.

**314.** Sec. 1. When a protest is to be extended before the Court, two men, skilled and experienced in maritime matters, shall be present to assist the Court as experts.

The said experts are to be appointed by the Court before the expiration of each year and to officiate during the year ensuing. Two substitutes shall likewise be appointed to sit in lieu of the said experts in cases of lawful hindrance; should the substitutes be legally prevented to sit, the Court shall in each separate case call in others.

ved Parternes Forslag, selv om det er enstemmigt.

De sakkunnige njute ersättning af allmänna medel till belopp, som Konungen bestämmer.

och erfarne män hafva säte och stämma i rätten. Stadsfullmäktige i stad, hvars rådstufvurätt enligt 326 § eger upptaga dylikt mål, skola före utgången af hvarje år utse desse särskilde ledamöter att utföra befattningen under det följande året. För att i deras ställe, vid inträffadt förfall, tjenstgöra skola tillika tre suppleanter utses; uppstår hinder jemväl för dem, ege rätten för hvarje särskildt fall tillkalla andra.

2 mom. När vid rådstufvurätt till handläggning förekommer mål angående klander af dispache, skola, utom domfört antal af rättens ledamöter, tre i handel och sjöfart kunnige

De särskilde ledamöterna njute ersättning till belopp, som Konungen bestämmer; skolande denna ersättning af endera parten eller af parterna gemensamt gäldas, efter ty rätten, enligt de i 21 kap. rättegångsbalken stadgade grunder, pröfvar skäligt.

**315.** Sogsmaal mod Reder kan efter Sagsøgerens Valg anlægges ved Indstævntes personlige Værnething eller paa Skibets Hjemsted. Det samme gjælder for Sogsmaal mod Skibsfører eller Mandskab i Anledning af Forpligtelser, paadragne i Tjenesten.

Til Indtale af Fordring, for hvilken Skib eller Ladning hefter, kan i Tilfælde af Arrest i Skibet eller Ladningen Sogsmaal anlægges paa det Sted i Riget, hvor Arresten er foretaget.

**316.** Sjøretten holdes ikke til bestemte Tider, men sammentræder, naar der forefalder nogen under samme hørende Forretning eller Retssag. Rekvisenten har at henvende sig til Rettens Formand med sin Stævning eller med et skriftligt Andragende om Sjøret, i hvilken Sagens Gjenstand og Retshandlingens Hensigt kortelig anføres, og de Personer opgives, som ønskes indkaldte, eller han kan mundtlig andrage Sagen for Formanden. Denne berammer da Stævningen eller paa tegner Andragendet Berømmelse og Indkaldelse, eller han udfærdiger i Tilfælde af mundtligt Andragende en særskilt Indkaldelse.

Formanden besorger Rettens øvrige Medlemmer tilsagte til Mødet og det uden særlig Godtgjørelse, saafremt de har Bolig inden samme Kjøbstad eller Ladested; ligeledes har han, naar det af Rekvisenten forlanges, paa dennes Bekostning at besørge Stævningen eller Indkaldelsen forkyndt for Vedkommende.

**317.** Varsel til Sjøret er saavel for Parter som for Vidner det samme som i Gjøsterets-

**315.** När anmälan skett om inträffad sjöolycka, på sätt i 40 § är stadgad, sammanträde rätten, så snart ske kan, till sjöförklarings upptagande. Till sammanträdet inkalle ordföranden befälhavaren, med förständigande att medhafva alla de personer, som antagas kunna lemna upplysning i saken, äfvensom att förete dagboken i hufvudskrift, der den finnes i behåll; underrätte ock, senast dagen förut, genom kungörelse i ortens tidning, och, der så ske kan, genom särskildt meddelande de personer, hvilka saken kan angå, eller deras ombud om tiden för sammanträdet äfvensom hvar och när den om händelsen ingifna anmälan med dertill hörande handlingar finnes tillgänglig.

**316.** Vid sjöförklarings upptagande skola först befälhavaren och derefter de till upplysning i saken inkallade personer hvar för sig af gifva en så vidt möjligt sammanhängande berättelse angående händelsen; der någons berättelse är ofullständig, otydlig eller obestämd, bör rätten genom lämpliga frågor söka erhålla säker upplysning om hvad han verkligen erfarit angående händelsen. Sedan samtliga berättelser afgifvits, böra, der ej laga hinder finnes möta eller rätten eljest med afseende å sakens omständigheter finner edgång ej böra ega rum, de till upplysning i saken inkallade personer sina berättelser, sedan de blifvit ur protokollet upplästa, med vittnesed bekräfta.

Rätten ege till förhör inkalla jemväl andra af besättningen än dem, befälhavaren medtagit.

**317.** Har fartyg förolykats, af besättningen öfvergifvits i sjön, råkat på grund, så att det

ad § 317 S. Sml. Deklaration af 25 Mai 1906 angående Pligt för Domstolene i Sverige og Norge til Undersøgelse angaaende Sjøulykke, som har rammet Fartoi, tilhørende det andet Land.

## Norwegian Text.

appointment shall not be set aside even when the parties agree as to the men they would desire appointed, neither shall the Judge be obliged to assent to any proposal of the parties in respect to the appointment, even if such proposal is made unanimously.

be members of the Court, besides the usual to form a quorum. The Town Councils of Towns where the Courts are empowered to take up similar cases in conformity with Art. 326 shall appoint the aforesaid special members before the expiration of each year to act during the ensuing year. Three substitutes shall likewise be appointed to act in their stead, in case of lawful hindrance, and should the said substitutes be legally prevented, the Court shall in each special case have the power to call in others.

The compensation of the special members shall be fixed by his Majesty and shall be paid either by one of the parties or by both jointly, as the Court may adjudge, in accordance with the principles laid down in Chap. 21 of the Law of Procedure

## Swedish Text.

The compensation of the experts, payable from public funds, shall be fixed by his Majesty.

Sec. 2. When cases regarding disapproval of adjustments of averages are to be tried by a Town Court, three men, skilled and experienced in mercantile and maritime matters, shall number of members of the Court necessary Art. 326 shall appoint the aforesaid special to act during the ensuing year. Three substitutes shall likewise be appointed to act in their stead, in case of lawful hindrance, and should the said substitutes be legally prevented, the Court shall in each special case have the power to call in others.

**315.** Lawsuits may be instituted against the owners of a ship, according to the choice of the prosecutor, either in the Court of the District to which the defendant belongs or in that of the home port of the vessel. This same rule shall apply to lawsuits instituted against the master or crew in respect to liabilities incurred while in the service of the ship.

For the recovery of claims for which a maritime lien is attached to the ship or the cargo a suit may be instituted, provided the ship and cargo has been arrested, at the place where the seizure has been effected.

**316.** The Maritime Court does not sit at fixed periods, but is held whenever any cause or matter subject to its jurisdiction may arise. A plaintiff shall attend before the President of the Court with a summons or with a written application for a Court to be held, in which the nature and purpose of the case shall be concisely stated, and the names given of those persons whom he desires to be summoned, or he may verbally lay the case before the President. The President of the Court shall thereupon fix the date for answering the summons, or endorse the application with the date on which the Court will be held and a citation to the parties to appear, or, in the event of a verbal application, he shall issue a special summons. The application shall be written on stamped paper, as prescribed for a summons, and likewise the summons which may be specially issued by the President of the Court.

The President shall give notice to the other members to attend the Court, and that without extra remuneration, provided they are domiciled within the same town or creek as himself. When required by the plaintiff he shall likewise cause the summons to be served on the parties concerned, at the expense of the plaintiff.

**317.** The term of notice to answer a summons at a Maritime Court shall be the same,

**315.** Whenever a report has been made in the manner enacted in Art. 40, regarding the occurrence of a casualty, the Court shall, as soon as possible, assemble for extending the protest. The Chairman shall call the master to appear at the sitting of the Court, and shall charge him to bring with him all persons likely to be able to furnish information about the matter, and to exhibit the logbook in original, when preserved, and he shall further by means of an advertisement in the Local Newspapers and also, where practicable, by special notice at the latest on the day preceding, inform all the persons concerned, or their representatives, of the time when the Court sits and also when and where the report of the casualty and the documents belonging to the same are accessible.

**316.** Whenever a protest is extended, the master first, and thereafter the persons called in order to furnish information, shall severally make as coherent a statement as possible regarding the accident. In case of the statement of any of the persons being incomplete, indistinct or uncertain, the Court should try to obtain exact information as regards his actual knowledge of the accident by suitable questions. When all the statements have been made and read from the record to the persons called to furnish information regarding the matter, the said persons should confirm the same on their oath as witnesses, where no lawful impediments are found to exist, or the Court should otherwise decide that, taking the circumstances of the case into consideration, no oaths ought to be taken.

The Court shall have the power also to call other members of the crew than those brought by the master.

**317.** If a ship is lost, or abandoned by the crew at sea, or so seriously stranded that she

To § 317 S. Cf. the Declaration of 25th May 1906 concerning the obligation of Swedish and Norwegian Courts to examine the circumstances of accidents at sea happening to vessels belonging to the other country.

sager: ligesaa gjælder i Henseende til Forligsmægling, Sagens videre Behandling samt Doms Afgjælse og Exekution de samme Regler, som for de nævnte Sager er givne; dog kan Overførelse til almindeligt Thing ikke finde Sted.

I Sager mellem Skibsfører og Mandskab eller Reder og Mandskab maa en Part ikke møde ved Sagfører, medmindre Rettens Tilbudelse dertil er erhvervet.

Naar en Part ikke møder ved Sagfører, har Retten at vejlede ham saavel med Hensyn til de Oplysninger, der bør tilveiebringes, som ved at føre hans Procedure og Paastand til Protokols.

I saadanne Sager, som omhandles i Lov af 8de Mai 1869 om Paakjendelse af smaa Gjældssager osv. § 13 Bogstav b, kommer ogsaa ved Sjoretterne Bestemmelserne i samme Lovs § 14 til Anvendelse.

4. Førseelse af lots eller vägvisare, bristfällighet i sjökort eller å fyrrar, sjömärken eller andra inrättningar till sjöfartens säkerhet eller förseelse eller försummelse af den, åt hvilken dylika inrättningars skötsel och vård är anförtrodd.

Finner retten för upplysnings vinnande nödigt att höra jemväl personer, som icke tillhöra besättningen, må de till vittnesförhör inkallas; och njute de, som sålunda inkallats, ersättning af allmänna medel, efter ty om ersättning till vittnen i brottmål är stadgad.

318. Alle Forretninger, der udføres af Sjøretten, bestyres af Formanden, som tillige fører Protokollen, hvor ikke særskilt Retskriver er ansat.

Tiltrænges Tolk, og ingen af Rettens Medlemmer kan og vil forrette som saadan, tilkaldes en autoriseret Translatør eller anden sproglyndig Mand, der tages i Ed paa, at han med Samvittighedsfuldhed og efter bedste Evne vil udføre sit Hverv. Har han tidligere aflagt Ed som Translatør eller Tolk, er det dog tilstrækkeligt, at han henholder sig til denne. Tolken Betaling, der udredes af Rekvirenten, bliver, forsaavidt den ikke er lovbestemt, at fastsætte af Retten.

319. Sjøforklaringer, Besigtelser, Skjøn og Taxtforretninger over Skib og Gods saavel som andre Forretninger, der af Retten skjønnes ikke at taale Opsættelse, kan foretages, uagtet Eier, Forsikrer eller Andre, hvem Forretningen vedkommer, ikke er varslede til samme; dog bør Indkaldelsen ikke undlades, naar det er Rekvirenten eller Retten bekjendt, at den Vedkommende selv eller hans Kommissionær opholder sig paa Stedet eller saa nær ved samme, at Varsel bekvemmelig kan gives. Retten bør stadig have sin Opmærksomhed henvendt paa, at i deslige Tilfælde Fraværende ikke forurettes.

320. Ved Sjøforklaring skal Dagbøgerne have tilstede og af Retten sammenholdes med den Udskrift, som Skibsføreren i Henhold til § 40 har at indlevere. Først modtages Skibsførerens mundtlige Forklaring, og der-

icke utan ovanliga åtgärder, såsom kapning af mast eller kastning af last, kunnat åter blifva flott, eller har skada uppstått derigenom att fartyget stött tillsammans med annat fartyg, eller har fartyget drabbats af olycka, hvarmed förlust af menniskolif varit för- enad; åligge rätten att i sammanhang med sjöförklaringens upptagande söka åstadkomma fullständig utredning angående orsakerna till olyckan. Särskildt bör dervid undersökas, huru vida olyckan härledt sig af

1. Fel hos fartyget, dess utrustning eller bemanning;
2. Orsaker, härrörande från lastningen, såsom att fartyget varit överlastadt, eller att lasten varit af farlig beskaffenhet, eller att den varit felaktigt fördelad eller stufvad eller icke behörigen försedd, eller att lasten varit otillräcklig, otjenlig eller icke behörigen försedd;
3. Förseelse eller försummelse under resan af befälhafvaren eller någon af besättningen å fartyget, eller af befälhafvare eller någon af besättningen å annat fartyg;

4. Förseelse eller försummelse af den, åt hvilken dylika inrättningar till sjöfartens säkerhet eller förseelse eller försummelse af den, åt hvilken dylika inrättningars skötsel och vård är anförtrodd.

318. När anmälan skett om sådan sjöolycka, som i 317 § sägs, åligge rättens ordförande att om tiden för den deraf föranledda undersökning underrätta vederbörande åklagare.

319. Den i 317 § föreskrifna undersökning skall, när sjöförklaringen afgifves utom riket, verkställas af vederbörande konsul; och åligge befälhafvaren, som har att för sådant ändamål anmäla sig hos konsuln, att till undersökningen medhafva dagboken äfvensom de personer, hvilka antagas kunna gifva upplysning angående olyckshändelsen. Der det lämpligen kan ske, bör konsuln tillkalla två ojäfvice, i sjöväsendet kunnige, helst svenske, norske eller danske män att vid undersökningen närvara.

Har i här omförmälda fall undersökning angående den inträffade olyckan hållits af dertill behörig utländsk myndighet, vare ytterligare undersökning ej af nöden.

320. Har fartyg förolyckats, utan att någon, som kunnat göra anmälan om olyckan, blifvit räddad, eller har eljest undersökning med anledning af sådan olyckshändelse, som i 317 § omförmäles, uteblifvit; ege Kommers-

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in respect to both principals and witnesses, as that prescribed for the special courts held on behalf of strangers (Gjaesteretssager); and proceedings at the Court of Conciliation, further action in the case, as well as the delivery of the verdict and carrying into effect the judgment of the Court, shall be subject to the same rules as are ordinarily prescribed in such instances, but their removal to an ordinary Court may not take place.

In actions between a master and his crew or owners and crew it shall not be lawful for the parties to appear by attorney except when the permission of the Court to do so has been obtained.

If a party does not appear by attorney the Court shall assist him both in respect to the evidence which ought to be procured, and by entering his course of proceedings and assertions or claims on the minutes of the Court.

In such actions as are mentioned, in the Law of May 8th, 1869, relative to proceedings for the recovery of small Debts etc. § 13, b, § 14 of that Law shall also apply to proceedings before the Maritime Court.

4. Any fault of a pilot or person piloting, or any incorrectness of charts or defectiveness of lighthouses, beacons, or other institutions for the safety of navigation, or any fault or neglect of any person to whom the care and management of such institutions have been entrusted.

Should the Court find it expedient also to hear other persons than those of the crew in order to obtain information, such persons may be summoned as witnesses; and any person summoned as aforesaid, shall be paid from public funds in conformity with the enactments regarding the compensation of witnesses in criminal cases.

**318.** All the business of the Maritime Court shall be conducted by the President, who shall likewise keep the minutes of the proceedings, when no special clerk is appointed to the Court.

If an interpreter is required the Court shall, if none of its members is able or willing to act in such capacity, call in a sworn translator or other person conversant with the language he will fulfil the duty imposed upon him his ability. If he has previously been sworn him to declare that he holds to his previous be paid by the applicant, shall, if not fixed by

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cannot be floated except by employing extraordinary means, like that of dismasting the ship or jettisoning the cargo, or if damage has been sustained through collision with another ship, or should the ship have met with an accident entailing the loss of human life, it shall be the duty of the Court, in connection with the extending of the protest, to try to obtain a full and complete explanation regarding the cause of the accident. In particular, it should be inquired into whether the accident is due to any of the following causes, i. e.:

1. Any defect of the ship, her equipment, or crew;
2. Any cause dependent upon the loading, for instance overloading of the ship, dangerous nature, wrong partitioning, bad stowage or improper trimming of the cargo, or any insufficiency, unfitness or improper trimming of the ballast;
3. Any fault or neglect on the part of the master, or any of the crew of the ship, or of the master or any of the crew of any other ship during the voyage;

4. Any fault of a pilot or person piloting, or any incorrectness of charts or defectiveness of lighthouses, beacons, or other institutions for the safety of navigation, or any fault or neglect of any person to whom the care and management of such institutions have been entrusted.

Should the Court find it expedient also to hear other persons than those of the crew in order to obtain information, such persons may be summoned as witnesses; and any person summoned as aforesaid, shall be paid from public funds in conformity with the enactments regarding the compensation of witnesses in criminal cases.

**318.** Whenever a report has been made regarding any of the casualties referred to in Art. 317, it is the duty of the Chairman of the Court to inform the proper public prosecutor of the time of the inquiry to be held in connection therewith.

in question, who shall declare upon oath that conscientiously and according to the best of as translator or interpreter it will suffice for oath. The fees of the interpreter, which shall law, be determined by the Court.

**319.** Maritime declarations, surveys, estimates and valuations relative to a ship or cargo, and other acts which in the opinion of the Court cannot be delayed, may be proceeded with even though the owners, insurers, or others interested in the matter have not been summoned to attend the same, but summons to attend ought not to be omitted if the plaintiff, or the Court, is aware that they or their agents are present either at the same place, or so near to it that they can be summoned without difficulty. The Court ought in such cases always to see that the rights of absent persons are not prejudiced.

**320.** When maritime declarations are taken, the log books shall be produced and compared by the Court with the copy thereof which, according to § 40, the master is required to hand in to the Court. The verbal declaration

**319.** Whenever the protest is extended outside the Kingdom, the inquiry prescribed in Art. 317 shall be made by the proper Consul, and it shall be incumbent upon the master, whose duty it is to appear before the Consul, to bring the logbook with him for inspection, and the persons who are supposed to be able to furnish information regarding the accident. Where practical, the Consul should summon two impartial men experienced in maritime matters to be present at the inquiry, Swedes, Norwegians or Danes to be preferred.

No further inquiry shall be necessary, where, in any of the cases above referred to, an inquiry has been held regarding the accident by a proper foreign authority. (*Law of the 27th of April, 1906.*)

**320.** If a ship has been lost, and no one who could have given notice of the casualty, been saved, or if otherwise no inquiry has been made on account of any such accident as referred to in Art. 317, the Board of Commerce shall

efter fores de Vidner, som af Skibsføreren fremstilles eller af Retten er indkaldte; for Alles Vedkommende iagttages, at Iugen paahorer en andens Forklaring.

Vidnere har at afgive en saavidt muligt sammenhængende Beretning om vedkommende Begivenhed: er den ufuldstændig, utydelig eller ubestemt, bør Retten ved særskilte Spørgsmaal søge at erholde sikker Oplysning om, hvad Enhver selv har erfaret. Forinden Examinationen begynder, skal Retten alvorlig formane Vidnerne til at forklare Sandhed og fuld Sandhed samt foreholde dem Edens Betydning og den borgerlige Straf, som de paadrager sig ved i nogen Henseende at afvige fra Sandheden. Edfæstelse maa som Regel først finde Sted, efterat samtlige Vidner er afhorte.

321. Er norsk Skib forulykket eller forladt i Sjøen, eller har det stødt paa Grund og ikke kunnet komme af uden fremmed Hjælp eller Kastning eller Kapning, eller har det lidt Skade ved Ildsvaade eller havt Sammenstød med andet Skib, hvorved Skade er voldt, eller er det blevet rammet af nogen Ulykke, hvorved Menneskeliv er gaaet tabt, da har Retten i Sammenhæng med Sjøforklaringen saavidt muligt at søge fuld Oplysning om Ulykkens Aarsager. Navnlige bliver det at undersøge, om Ulykkens er en Følge af:

1. Feil eller Mangler ved Skibet, dets Instrumenter, Udrustning eller Bemandning;
2. Aarsager, der hidrører fra Ladningen, saasom at Skibet har været overlastet, eller at Ladningen har været af farlig Beskaffenhed, eller været feilagtig fordelt, eller ikke forsvarlig stuvet og sikret, eller at Balasten har været utilstrækkelig, utjenlig, feilagtig fordelt eller ikke forsvarlig sikret;
3. Forsøelse eller Forsømmelse af Skibsfører eller Mandskab eller af andet Skibs Skibsfører eller Mandskab;
4. Forsøelse eller Forsømmelse af Lods eller Kjentmand, Mangler ved Karter eller ved Fyre, Sjømærker eller andre til Sikkerhed for Sjøfarten anbragte Indretninger.

322. Hvis der under Sjøforklaring fremkommer skjellig Grund til Mistanke om, at Nogen har gjort sig skyldig i strafbart Forhold, skal Retten uopholdelig give Paatalemyndigheden Underretning herom og alene fortsætte Undersøgelsen mod den Mistænkte i den Udstrækning, som Lov om Rettergangsmaaden i Straffesager af 1ste Juli 1887 § 692 hjemler; Edfæstelse maa i saa Fald kun finde Sted under de i samme Lovs § 185 angivne Betingelser.

323. De i §§ 320 og 321 givne Bestemmelser kommer ogsaa til Anvendelse, naar Sjøforklaring i fremmed Land i Medfør af § 40, sidste Stykke, afgives for Konsulen. I de Tilfælde, som omhandles i § 321, bør Konsulen saavidt muligt tilkalde to Skibsførere, helst norske, svenske eller danske, eller andre sagkyndige Mænd til at bistaa ved Undersøgelsen. Udskrift af Forretningen og den fremlagte Afskrift af Dagbøgerne skal af

kollegium förordna om undersöknings anställande å ort, der sådan lämpligen kan företagas.

321. Sedan sådan undersökning, som i 317 § omförmåles, avslutats, skall rätten eller konsulen, som den förrättat, ofördröjligen insända protokoll öfver undersökningen till Kommerskollegium. Har fartyget förölyckats, eller kan eljest dagboken från fartyget undvaras, skall denna jemte protokollet insändas men eljest en fullständig afskrift af dagboken i de delar, som angå undersökningen. Är å utländsk ort undersökningen verkställd af vederbörlig myndighet, åligge konsulen att till Kommerskollegium insända afskrift af det vid undersökningen förda protokoll.

Finnes undersökning i någotafseende ofullständig, ege Kommerskollegium förordna om ny undersöknings anställande å ort, der sådan lämpligen kan ega rum.

322 är upphäfd, jfr. lag af 27 april 1906.

323. Tvistemål, som bör bedömas efter denna lag, skall, der ej här nedan annorlunda stadgas, instämmas till rådstufvurätten i den stad, der svaranden har sitt bo och hemvist, eller der fartyget finnes; har svaranden icke sitt hemvist i stad med rådstufvurätt, eller finnes fartyget å ort, der rådstufvurätt icke är, gånge tvisten till den rådstufvurätt, som är närmast endera af dessa orter.

ad § 322 S. Jfr. nu Lag af 27 April 1906 om skyldighet för svensk domstol att upptaga sjöforklaring och verkställa undersökning fartyg.



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of the master shall first be taken, and thereupon the depositions of the witnesses produced by the master or summoned by the Court. It ought to be observed that none of them hear the evidence of the others.

The witnesses shall, as far as possible, give a coherent account of the occurrence. If such account is found to be incomplete, doubtful or special questioning, to obtain true evidence of what each one has himself actually observed. Previous to the examination the Court shall seriously exhort the witnesses to tell the truth, the whole truth, and nothing but the truth, and represent to them the nature of the oath, likewise the civil punishment they will bring upon themselves if they in any way swerve from the truth. As a rule the witnesses before all have been examined.

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order an examination to be held at any place suitable for such inquiry.

vague, the Court ought to endeavour, by what each one has himself actually observed, seriously exhort the witnesses to tell the truth, and represent to them the nature of will bring upon themselves if they in any oath must not be administered to the

**321.** If a Norwegian ship is wrecked, or abandoned at sea, or has run aground and could not get off without foreign assistance, or jettison of goods, or cutting away of gear, or if it has suffered damage by fire, or been in collision with another ship by which damage has been occasioned, or met with any accident by which loss of human life has been incurred, then the Court shall, in accordance with the maritime declaration, endeavour to obtain full information as to the causes of the accident. It ought particularly to be ascertained whether the accident was due to:

1. Any fault or deficiency in the ship, its instruments, equipment or manning;
2. Causes arising from the cargo, for instance, that the ship has been overloaded, or the cargo been of a dangerous nature, or badly distributed, or not properly stowed or secured, or that the ballast has been insufficient, of unsuitable nature, badly distributed or not properly secured;
3. Any default or neglect on the part of the crew of another ship;
4. Any default or neglect on the part of any certificated or non-certificated pilot, defective charts, lights, beacons or other objects or appliances intended to secure the safety of the navigation.

**321.** Whenever such an inquiry as mentioned in Art. 317 has been completed, the Court or the Consular Officer holding it shall transmit to the Board of Commerce without delay the record of the inquiry. If the ship is lost, or the logbook for other reasons can be parted with, it should be transmitted together with the record, but, failing this, a full and complete copy extract of the logbook, having reference to the matter of the inquiry, should accompany the record. In case, at a foreign place, the inquiry has been held by the proper local Authority, it shall be the duty of the Consul to transmit to the Board of Commerce a copy of the record kept at the inquiry.

Should the inquiry in any way be found defective, the Board of Commerce shall have the power to cause a fresh inquiry to be instituted at any suitable place.

**322.** If, during the taking of a maritime declaration, reasonable grounds should arise to suspect that some person has committed a punishable offence, the Court shall directly inform the Public Prosecutor thereof, and limit the further investigation of the suspected person to the extent accorded by the rules of § 269 of the Law of July 1, 1887, concerning proceedings in criminal cases. In such cases the administration of the oath must only be made in accordance with the provisions of § 185 of the said Law.

**323.** The rules of §§ 320 and 321 shall likewise apply to maritime declarations taken by the Consuls abroad by virtue of the last section of § 40. In the cases referred to in § 321, the Consul ought, when possible, to call two masters, by preference Norwegian, Swedish or Danish, or other persons of nautical skill or knowledge, to assist in the investigation of the case. A copy of the minutes of the proceedings and extracts of the log-books

**322.** *Repealed by Law dated the 27th of April, 1906.*

**323.** Any litigation which should be judged according to this Law, shall, unless hereinafter otherwise provided for, be brought before the Court of the town in which the defendant is domiciled, or at which the ship is lying for the time being. If the defendant does not reside in any town provided with a Town Court, or if the ship is in a place where there is no Town Court then and in such case, the dispute shall be referred to the nearest Town Court.

*To § 322 S.* Cf. now the Law of 27th April 1906 concerning the obligation of Swedish Courts to receive maritime reports and to examine the circumstances of accidents at sea which have happened to foreign vessels.

Konsulen indsendes til vedkommende Regjeringsdepartement.

Äro flere redare i ett fartyg, skall fartygets hemort anses såsom rederiets hemvist.

De tilkaldte Mænd kan tilstaaes en Godtgjørelse af Statskassen efter Regler, som bestemmes af Kongen.

324. Eri noget Tilfælde, som omhandles i § 321, Sjøforklaring ikke bleven afgivet, saasom fordi Ingen, der pligtede at anmelde Ulykken, har overlevet samme, eller har af anden Grund Undersøgelse af den indtrufne Ulykke ikke fundet Sted, bliver Undersøgelse at foretage af Retten eller Konsulen paa det Sted, hvor det hensigtsmæssig kan ske. Saaledes bliver Undersøgelse at anstille paa Skibets Hjemsted, naar Skib er forsvundet, og ellers i Almindelighed paa det Sted, hvor Skibet efter Ulykken er indkommet, eller hvor Mandskab, Skib eller Vrag er kommet iland.

324. Hafva parter öfverenskommit, att tvist må instämmas till viss annan rådstufvurätt än den, som enligt 323 § är behörig; då må den rätt sökas.

325. Naar en Skibsfører paa svensk eller dansk Skib lader Sjøforklaring optage i Norge, har Sjøretten i saadanne Tilfælde, som omhandles i § 321, at anstille de der nævnte Undersøgelser og, saasnart Forretningen er sluttet, at indsende Udskrift af samme til vedkommende Regjeringsdepartement. Denne Bestemmelse gjælder for svensk Skib, saalange der i Sverige, og for dansk Skib, saalange der i Danmark gjælder tilsvarende Bestemmelse med Hensyn til Sjøforklaring, som der aflægges af Skibsfører og Mandskab paa norsk Skib.

325. Vill någon för anspråk, som grundar sig på befälhafvarens görande eller låtande, på en gång söka denne och redaren, ege han instämma båda till den domstol, der endera är skyldig att svara.

I Strandingstilfælde skal ogsaa for andre fremmede Skibes Vedkommende Sjøretten, overensstemmende med Forskrifterne i § 321 i Forbindelse med Sjøforklaringen søge Oplysning om Ulykkens Aarsager.

326. Nærmere Forskrifter om, hvad der i de i §§ 321—325 omhandlede Tilfælde er at iagttage, kan gives af Kongen.

326. Den, som icke åtnöjes med dispache, skall göra ain klandertalan anhängig vid rådstufvurätten i den stad, der dispachen är utgifven.

327. Det i Lov om Skibsmandskabers Monstring af 29 Juni 1888 § 10 paabudte Thingsvidne bortfalder, dersom de fornødne Oplysninger tilveiebringes under Sjøforklaring her i Riget, men Skibsføreren har at oversende til Indrulleringsvæsenet Afskrift af vedkommende Afsnit af Forklaringen.

327 är upphäfd, jfr. lag af 14 Juni 1901.

328. Auktion, som afholdes i Medfør af nogen Bestemmelse i denne Lov, udenfor Lovens § 20 og 23, er hverken med Hensyn til Bekjendtgjørelse, Varsel eller Betalingsvilkaar bunden ved de for Tvangsauktion gjældende Forskrifter. Naar ikke anderledea i særligt Tilfælde er foreskrevet, skal Bekjendtgjørelse skeien eller flere af Stedets Aviser eller paa anden der brugelig Maade med mindst 3 Dagea Varsel i Retskredse, som ligger under de i § 313 omhandlede faste Sjøretter, men i andre Thinglag med mindst 6 Dages Varsel. Forudgaaende Forligsmægling er i intet Tilfælde nødvendig.

328. Brottmål, som bör bedömas efter denna lag, skall, der brottet föröfvats i stad med rådstufvurätt, upptagas vid den stadens rådstufvurätt, men om brottet föröfvats å ort, der rådstufvurätt icke är, vid den rådstufvurätt, som är närmast. Har brott skett under resa, gånge målet till rådstufvurätten i den stad, dit den brottslige med fartyget först ankommer eller der han eljeat träffas; ligger den ort icke inom rådstufvurätts domvärjo, gånge målet till den rådstufvurätt, som är närmast.

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produced to the Consul shall be forwarded by him to the Department of the Government concerned.

The parties called by the Consul to assist him in the investigation shall be entitled to remuneration, to be defrayed by the Treasury according to such regulations as the King may determine.

**324.** If, in any of the instances mentioned in § 321, a maritime declaration has not been taken, either because no person has been rescued of those whose duty it would have been to give notice of the casualty, or because from other reasons no inquiry respecting the occurrence has taken place, an investigation shall be held by the Court, or the Consul, at the place where it can be conveniently effected. Thus, in the case of a ship having disappeared the investigation shall be held in the port to which the ship belonged and in other cases, as a rule, at the place where the ship calls after the casualty, or where the crew, the ship or the wreck has come ashore.

**325.** If a maritime declaration is made by the master of a Swedish or Danish ship in Norway, the Maritime Court shall, in the cases mentioned in § 321, make such investigation as mentioned in the said paragraph (Article), and upon the conclusion thereof send a copy of the minutes of the proceedings to the Department of the Government concerned, as that in Sweden, and to Danish ships, so regulations are in force respecting maritime masters and crews of Norwegian ships.

In instances of foreign ships running aground, the Maritime Court shall, likewise, when taking a maritime declaration, institute enquiries as to the causes of the casualty, in pursuance of the rules of § 321.

**326.** Further regulations as to the proceedings to be taken in the cases mentioned in §§ 321 to 325, may be issued by the King.

**327.** The evidence of witnesses to be taken in pursuance of the Law of June 29, 1889, § 10, relative to the hiring of seamen, shall not be required if the necessary particulars are obtained at the taking of a maritime declaration in Norway, but the master shall in such a case forward a copy of the part of the declaration in connection therewith to the enrolling officer.

**328.** If any sale by auction is held in pursuance of any regulation contained in this Law, not including §§ 20 and 23, such sale shall not be subject to the rules prescribed for compulsory sales by auction in respect to the notification of the auction, the notice to be given, or the conditions of payment. If not otherwise provided for in this Law in special cases, notice of the sale shall be given by advertisement in one or more of the local newspapers, or in other customary manner at such place, at least three days beforehand in districts belonging to the jurisdiction of such permanent Maritime Courts as are referred to in § 313, but in other districts at least 6 days before the sale. Preliminary proceedings for the conciliation of the parties shall in no case be necessary.

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If several persons own a ship, the port to which the ship belongs shall be deemed to be the domicile of the owners.

**324.** In case the parties have agreed to the dispute being brought before any particular Town Court, other than the proper tribunal according to Art. 323, then such Court may be applied to.

**325.** Any person desiring to sue the master and the owners simultaneously for any claim based on the fault or neglect of the former, shall summon both parties to appear before the Court, where either of the said parties is bound to respond.

This rule shall apply to Swedish ships, so long as that in Denmark, corresponding declarations made in those countries by the

the Maritime Court shall, likewise, when taking the causes of the casualty, in pursuance of

**326.** Any person dissatisfied with an adjustment of average shall bring his complaint before the Town Court of the Town where the adjustment was made.

**327.** *Repealed by the Law dated the 14th of June, 1901.*

**328.** Any criminal case to be adjudged according to this Law shall be tried by the Town Court of the town where the offence has been committed, but, should the offence have been committed in any town or place not provided with any Town Court, such offence shall be tried by the nearest Town Court. Any offence committed during a voyage shall be tried by the Town Court of the town at which the offender first arrives with the ship, or wherever he may otherwise be met with; should the latter place be situated beyond the jurisdiction of any Town Court, the case shall nevertheless be tried by the nearest Town Court.

329. Den, som finder sig misfornoiet med et af Sjøretten afgivet Skjøn, kan paaanke samme til Overskjon, der bestyres af Sjørettens Formand og afgives af fem sagkyndige Mænd, opnævnte af vedkommende Byfoged eller Foged paa den i § 314 bestemte Maade. I Forskriften i Lov om Lodsvesenet af 17de Juni 1869 § 37, sidste Punktum gjøres herved ingen Forandring; ei heller kan Overskjon optages angaaende Storrelsen af Berge-løn eller dens Fordeling.

329. 1 mom. Den, som vill klandra dis-pahe, göre det genom tvefald skriftlig in-laga, som skall ingifvas till rådstufvurätten innan kloekan tolf å trettionde dagen från den, då dispaehen utgafs, den dagen likväl oräknad, eller, om trettionde dagen infaller å helgdag, å nästa sökendag; bifoge oek den klandrade utredningen samt de handlingar, kåranden åberopar. Å inställelsedagen vare oek sva-randen tillstådes att mottaga vederpartens in-laga. Sist å fjortonde dagen derefter gifve svaranden sitt svar tvefaldt in och bifoge de handlingar, han åberopar, der de ej redan åro ingifna. Ej må å någondera sidan mer än en skrift ingifvas.

Har ieke dispahe blifvit öfverklagad i den ordning, nu är sagdt, lände den till efterrättelse. 2 mom. Vill part blifva muntligen hörd, göre derom anmålan inom en månad efter in-ställelsedagen. Göres sådan anmålan, bestämme rättens ordförande genast dag för förhöret, som ofördröjligen skall inför rätten hållas. Har ej inom nyss stadgade tid anmålan skett och pröfvar ej heller rätten nödigt höra parterna, skall ofördröjligen genom anslag å rättens dörr tillkännagifvas viss dag, då rättens utslag kommer att afsägas.

3 mom. I rättens slutliga utslag skall fullständig underrättelse meddelas om hvad part för sökande af ändring i utslaget har att iakttaga.

330. Den, som finder sig misfornoiet med en Sjørets Dom, kan paaanke den til Hoieste-ret, naar Sagen angaar en appellabel Gjen-stand. Sagen indstævnes uden Hensyn til Hoiesterets Sessioner og foretages udenfor Ordenen efter Varslets Udlob. Ankefristen er i de i § 312 sidste Punktum omhandlede Tilfælde den samme som for Skrifterettens Decisioner.

330. Den, som vill söka ändring i rådstufvurättens utslag i mål, som i 326 § omförmåles, skall vid talans förlust innan kloekan tolf å trettionde dagen från utslagets dag, den dagen doek oräknad, eller, om trettionde dagen in-faller å helgdag, å nästa sökendag till råd-stufvurätten tvefaldt ingifva sina till Ko-nungen ställda underdåniga besvär; bifoge oek rättens protokoll och utslag i målet jemte de till saken hörande handlingar, klaganden kan anse nödigt förete.

af besvärsskriften; ege derefter tid af en stufvurätten ingifva underdånig förklaring sjittes den tid, ege han ej vidare varda i saken hörd. Sedan förklaring inkommit, eller tid för förklarings afgifvande gått till ända, skrifterna jemte samtliga till målet hörande handlingar ofördröjligen af rådstufvurätten insändas till Konungens Justitierevisionsexpedition.

Klagandens vederpart har att vid rådstufvurätten sjelf efterhöra, huru vidainom besvärstidens utgång besvär inkommit, och, der besvär anförts, uttaga ena exemplaret månad från besvärstidens utgång att till råd-jemte de handlingar, han vill åberopa; för-sittes den tid, ege han ej vidare varda i saken hörd. Sedan förklaring inkommit, eller utan att sådan afgifvits, skola de vexlade handlingar ofördröjligen af rådstufvurätten

331 har tabt sin Betydning ved Straffcloven af 22 Mai 1902 og de samtidig gjorte andringer i Straffprocesloven.

331. De skiljemän, till hvilkas pröfning tvist enligt denna lag skall i vissa fall hänskjutas, skola vara tre och utses i den ordning, lagen angående skiljemän den 28 Oktober 1887 bestämmer.

Hvad de fleste skiljemännen säga skall, änskönt någondera parten vill söka domaren, gå i verkställighet, der ej domaren eller öfver-exekutor annorlunda förordnar.

## Norwegian Text.

## Swedish Text

**329.** If any of the parties considers himself aggrieved by any estimate, investigation or report (Skjon) made by the Maritime Court, he may appeal therefrom to a Board of Appeal (Overskjon) consisting of five experts, and presided over by the President of the Maritime Court. The men shall be appointed by the Municipal Judge or by the Sheriff in conformity with the rules of § 314. The rule contained in this Article shall in no way modify the regulations contained in the last section of the Law of Pilotage of June 17, 1869, § 37; neither can any such appeal be made from the decision of the Court in respect to the amount awarded for salvage or its distribution.

Every adjustment not appealed against in the manner aforesaid shall become valid.

**Sec. 2.** Should any of the parties desire to be orally heard, notice thereof shall be given within one month from the day of appearance. In case such notice is given, the Chairman of the Court shall immediately fix the date of the inquiry, which shall be held before the Court without delay. If no such notice is given within the time above mentioned, and the Court does not find the hearing of the parties necessary, a certain date, upon which the Court will give their decision, shall without delay be made known by a notice posted on the door of the Court.

**Sec. 3.** The final decision of the Court shall contain full and complete information regarding the steps to be taken and the formalities to be observed by the party desiring to appeal against the decision.

**330.** If any of the parties considers himself aggrieved by a judgment pronounced by the Maritime Court, he may, provided the judgment concerns a matter that is not excluded from appeal, appeal therefrom to the Supreme Court. Such appeal may be brought irrespective of the Sessions of the Supreme Court, and the cause shall be heard, without regard to the order of causes before the Court, on the expiry of the term stated in the notice of appeal. Notice of such appeal must in all cases mentioned in the last section of § 312, be given within the same term as fixed for the decisions of the Intestate Estates, Probate and Bankruptcy Court.

**329.** Sec. 1. Any person wishing to complain of an adjustment of average shall do so by filing a written petition, in duplicate, to the Town Court before 12 o'clock on the thirtieth day, reckoned from the day the adjustment was issued, which latter day shall not be counted, or, should the thirtieth day happen to be a holiday, then and in such case, from the day following, it not being a holiday, and the plaintiff shall likewise annex the adjustment protested against and each and every document referred to by him. On the day of appearance the defendant shall also be present to receive the plaintiff's petition. The defendant shall thereupon, at the latest on the fourteenth day subsequent, file his response in duplicate, annexing the documents to which he refers, should they not have already been delivered. On neither side shall more than one petition or response be allowed to be filed.

**330.** Any person wishing to appeal against the decision of the Town Court, in any of the litigations referred to in Art. 326, shall lodge at the Town Court an appeal, in duplicate, addressed to His Majesty before noon on the thirtieth day from the date of the said decision, which latter day shall not be counted, or, should the thirtieth day happen to be a holiday, then and in such case on the day following, it not being a holiday, and in default thereof he shall be nonsuited. The record and the decision of the Court, together with all documents having reference to the case, and which the petitioner may find it expedient to exhibit, shall likewise be annexed.

obtain one of the copies of the said petition, the time of appeal shall thereupon be allowed the said adversary for the delivery to the Town Court of his explanation, together with all documents which he may desire to refer to. Should he fail to avail himself of the opportunity within the time mentioned, he shall not be entitled to any further hearing. On the delivery of the aforesaid explanation, or, when the term for the delivery of such explanation has expired, without it having been sent in, the documents presented on both sides shall be sent in to the Royal Sub-department for Revision Cases, together with all documents in connection with the case.

*331 has lost its importance through the Criminal Law of 22nd May 1902 and the modifications made at the same time in the Law concerning Criminal Procedure.*

It rests with the petitioner's adversary, himself to inquire whether any appeal has been made before the expiration of the time of appeal, and in case of such appeal, to A term of one month from the expiration of the said adversary for the delivery to the Town Court of his explanation, together with all documents which he may desire to refer to. Should he fail to avail himself of the opportunity within the time mentioned, he shall not be entitled to any further hearing. On the delivery of the aforesaid explanation, or, when the term for the delivery of such explanation has expired, without it having been sent in, the documents presented on both sides shall be sent in to the Royal Sub-department for Revision Cases, together with all documents in connection with the case.

**331.** The arbitrators by whom disputes are to be settled in certain cases, in accordance with this Law, shall be three in number and appointed in the order enacted by the Law regarding arbitrators of the 28 October, 1887. The decision of the majority of the arbitrators shall take effect, in spite of any of the parties desiring to apply to the Judge, unless such Judge or Head Bailiff should otherwise ordain.

332 er ophævet ved Lov om Betaling for offentlige Forretninger af 6 August 1897 § 179.

332. De besigtningmän, som enligt denna lag böra af magistrat eller kronofogde förordnas, skola vara tre. I de städer, der handels- och sjöfartsnämnd finnes, älligge magistraten att för hvarje år från nämnden infordra uppgift å personer, som till sådant uppdrags fullgörande anses skickliga.

Erfordras eljest besigtning, ege part derom anmoda den eller dem, för hvilka han har förtroende; älligande det magistraten i de städer, der handels- och sjöfartsnämnd finnes, att, efter förslag af nämnden, för hvarje år utse lämpligt antal personer, hvilka hafva att med dylik besigtning verkställande gå parter till handa, äfvensom att kungöra förteckning å de sálunda utsedde.

Denna lag träder i kraft den 1 Januari 1892.

333. I hvilken Udskrækning Forskrifterne i dette Kapitel skal komme til Anvendelse paa Sager, som allerede før Lovens Ikrafttræden er iretteførte, bestemmes af Kongen.

#### Fjortende Kapitel.

#### Lovens Ikrafttræden.

334. Denne Lov træder i Kraft den 1ste Juli 1894.

Fra den nævnte Tid ophæves, forsaavidt de endnu er gjældende:

Kong Christian den femtes norske Lovs 4de Bogs 6te Kapitel,

Lov om Sjøfarten af 24de Marts 1860 § 1, §§ 5—82, § 91 og §§ 93—132 samt Love indeholdende Tillæg til samme af 6te Marts 1869 og 3die Juni 1874,

saavelsom enhver anden Bestemmelse, der strider mod nærværende Lov.

Thi have Vi antaget og bekræftet, ligesom Vi herved antage og bekræfte denne Beslutning som Lov under Vor Haand og Rigets Segl.

Norwegian Text.

*332 has been repealed by the Law concerning payment of judicial expenses of 6th August 1897 § 179.*

Swedish Text.

**332.** The surveyors who should be appointed by the Magistrate or Crown Bailiff, in conformity with this Law, shall be three. It shall be the duty of the Magistrate in any of the Towns where there is a Chamber of Commerce and Navigation, to request each year from such Chamber, a statement of persons who are considered competent to act as surveyors.

Whenever in other cases a survey is required, the party concerned shall have the right to call any person or persons in whom he has confidence, and it shall be the duty of the Magistrates of the Towns, where there is a Chamber of Commerce and Navigation, to select, according to the suggestion of the said Chambers, a suitable number of persons, who shall have to render assistance to the parties concerned in and about such surveys.

This Law shall come into force on the 1st January, 1892.

**333.** The extent to which the rules contained in this chapter shall apply to causes pending in the Court at the time when this Law shall come into force shall be determined by the King.

#### Chapter XIV.

#### The time at which the Law shall come into force.

**334.** This Law shall come into force on the 1st day of July 1894.

From that date the following regulations shall be repealed provided that they are then still in force:

Chapter 6 of the 4th Book of the Norwegian Law of King Christian V.;

The Law of Navigation of March 24, 1860, paragraph 1, paragraphs 5 to 82, paragraph 91 and paragraphs 93 to 132, and the supplementary Laws of March 6th, 1869 and June 3rd, 1874;

and all other regulations which may be at variance with this Law.

We have consequently sanctioned and confirmed, and we hereby sanction and confirm this resolution as law under Our Hand and the Seal of the Kingdom.

## Dansk Lov om Oprettelse af Soretter uden for Kjøbenhavn samt om Søforklaringer og Søforhør.

Vi Christian den Niende, af Guds Naade Konge til Danmark o. s. v., gøre vitteligt: Rigsdagen har vedtaget og Vi ved Vort Samtykke stadfæstet følgende Lov:

§ 1. I borgerlige Retssager og Straffesager, som angaa Forhold, der omhandles i Søloven, eller Lodsvæsenet, tiltrædes den almindelige Underret uden for Kjøbenhavn af tvende søkyndige Mænd (se § 2) og benævnes Soret. Under denne hører ogsaa Optagelse af Søforklaring, Søforhør, Vidneforklaringer til Brug under Sager, der behandles ved Soret, samt de Retten paahvilende Forretninger med Hensyn til de i Søloven omhandlede Besigtigelser, Skøn og Taksationsforretninger.

Stedets Dommer, der er Formand i Soretten, har dog alene at beramme Retsmøder og forelobig alene at foretage det fornødne til Fremme af en Undersøgelse, som ikke taaler Opsættelse, saa og til Optagelse af en Søforklaring, der er særdeles paatrængende og ifølge hans Skøn kun kan antages at være af mindre Betydning, dog kun naar de søkyndige Retsmedlemmer ikke betimelig kunne komme til Stede. Disse blive fremdeles ikke at tilkalde til Retsmøder, i hvilke Dommeren skønner, at der ikkun vil blive fremlagt skriftlige Indlæg, begært Udsættelse eller fremsat og behandlet Formalitetsspørgsmaal. Ligeledes kan Udmeldelse af Syns- og Skøns-mænd til Besigtigelse af Skib og Ladning, naar desangaaende ikke er rejst Sag, ske uden for Retten af Sorettens Formand, saa vidt muligt efter Forhandling med et eller flere af Amtets Soretsmedlemmer (jfr. § 2).

De ovennævnte borgerlige Sager, som angaa Forhold, der omhandles i Søloven, kunne dog med begge Parters Samtykke ogsaa behandles og paakendes ved den almindelige civile Domstol.

2. (Indholder nærmere Regler om Beskikkelsen af Soretsmedlemmer.)

3. Af de paa Amtets Fortegnelse opførte Soretsmedlemmer tilkalder Stedets Dommer i hvert enkelt mødende Tilfælde hurtigst muligt tvende til at tage Sæde i Soretten. Ved Valget af disse har Dommeren at tage Hensyn til vedkommendes Kyndighed i de Anliggender, hvorom der fortrinsvis er Spørgsmaal under Sagen. hvorhos han har at iagttage, at de i Retskredsen eller i den By, hvor Rettens Tingsted er beliggende, boende Mænd først, og saa vidt muligt efter Tur, tilkaldes. De Soretsmedlemmer, som have overværet Retsmøder, hvori Forhandling om selve Sagen, Forhør, Vidneførsel, Afhjemlinger eller lignende processuelle Handlinger have fundet Sted, bør i Reglen ogsaa tage Sæde i Retten, naar saadanne processuelle Handlinger senere foretages i samme Sag, saavel som ved dens Paa-kendelse.

De i denne Lov omhandlede Soretsmedlemmer have at vige deres Sæde i samme Tilfælde som andre Dommere.

Kan der i en Sag ikke faas det fornødne Antal Soretsmedlemmer af de paa Amtets Fortegnelse opførte, har Stedets Dommer at henvende sig til Amtmanden i et andet Amt med Anmodning om at tilkalde Soretsmedlemmer efter dette Amts Fortegnelse, og de paagældende Mænd ere da pligtige at efterkomme et saadant Kald. Samme Regel gælder, naar Sagen i paatrængende Tilfælde derved hurtigere kan fremmes.

4. Forinden et Soretsmedlem første Gang tiltræder sin Virksomhed i Soretten, skal han underskrive en ham af Rettens Formand forelagt, af Justitsministeren foreskreven, Edsformular.

5. Der tilkommer Soretsmedlemmer uden for Kjøbenhavn, naar de give Møde over 1<sup>1</sup>/<sub>2</sub> Mil fra den By, hvori de bo, eller fra deres Hjem, naar de bo paa Landet, 8 Kr. i Dagpenge samt Rejseomkostninger, beregnede efter 2den Klasse Jernbane og 1ste Plads Dampskib, og ellers 2 Kr. pr. løbende Mil. Disse Udgifter afholdes forelobig paa samme Maade som Udgifterne i beneficerede Sager, men refunderes af Statskassen efter aarligt Regnskab.



## Danish Law concerning the establishment of Maritime Tribunals outside Copenhagen and concerning Maritime Reports and Inquiries.

We Christian the Ninth, by the Grace of God King of Denmark etc. make known: The Rigsdag has passed and We by Our consent have sanctioned and confirmed the following Law:

§ 1. In civil lawsuits and criminal causes which concern relations dealt with in the Maritime Law or concerning pilotage, the ordinary tribunals of the first instance outside Copenhagen are supplemented by two members (see § 2) who are experts in maritime matters, and are called *Maritime Tribunals*. These tribunals are also competent to receive maritime reports, make maritime inquiries, take the evidence of witnesses to be used in causes dealt with by a Maritime Tribunal, and for the transactions incumbent on these tribunals with regard to the visits, estimates and valuations dealt with in the Maritime Law.

The judge of the place in question who is the president of the Maritime Tribunal is, however, authorised alone to convene meetings of the Court and to undertake provisionally what is necessary for the furtherance of an inquiry which admits of no postponement, and also to receive maritime reports which are very urgent and according to his estimate are only of minor importance; but only when the maritime experts of the Court cannot appear in time. Further the expert members are not convened to sittings of the Court at which the judge is of opinion that only evidence in writing will be produced; or at which postponements are requested or questions regarding formalities are presented and discussed. Similarly, the president of the Maritime Court may outside the Court appoint experts to survey and estimate vessels and cargoes, when no action has been brought concerning the matter. Before such appointment he shall as far as possible have discussed the matter with one or more of the members of the Maritime Tribunal of the district (cf. § 2).

The above-mentioned civil causes concerning relations which are dealt with in the Maritime Law may, however, with the consent of the two parties, also be adjudicated on and judged by the ordinary civil tribunal.

2. (Contains further regulations regarding the appointment of members of Maritime Tribunals).

3. Out of the members of the Maritime Tribunal inscribed on the list of the county, the local judge in each particular case arising shall as quickly as possible convene two to sit in the Maritime Tribunal. In his choice of these members the judge shall take into consideration their knowledge of the matters in regard to which questions will probably arise during the cause; in addition he shall observe that the members resident within the jurisdiction or in the town where the Court has its seat are called upon first, and as far as possible in rotation. The members of a Maritime Tribunal who have attended sittings of a Court in which the proceedings of the cause itself, examinations, evidence of witnesses, taking oath or similar acts of procedure have taken place, ought also as a general rule to sit when such acts of procedure are subsequently performed in the same cause, as well as when judgment is given in the cause in question.

The members of a Maritime Tribunal dealt with in this Law shall withdraw in the same cases as other judges withdraw.

If in a cause the necessary number of the members of a Maritime Tribunal indicated in the list of the county cannot be obtained, the judge of the place shall apply to the sheriff of another county, requesting him to convene members of the Maritime Tribunal according to the list of the latter county, and the men who are thus called upon shall comply with the call. The same rule applies when a cause in case of urgency can by such a course be more quickly proceeded with.

4. Before a member of a Maritime Tribunal sits in the Tribunal for the first time, he shall sign a form of oath prescribed by the Minister of Justice and submitted to him by the president of the Tribunal.

5. The members of a Maritime Tribunal outside Copenhagen, when they travel more than a quarter of a mile from the town where they are domiciled, or from their home in case they live in the rural districts, are entitled to 8 kr. per day and travelling expenses, calculated on the basis of 2nd class railway and 1st class steamer fare, and otherwise 2 kr. per running mile. These expenses are provisionally paid in the same manner as the expenses of privileged causes, but are refunded by the Exchequer according to the annual account.

6. Med Hensyn til Sagers Behandling ved Soretten komme de almindelige for Underretterne gældende processuelle Regler til Anvendelse, dog at private Soretssager blive at behandle overensstemmende med Reglerne for Gæsteretsbehandling, ogsaa i Henseende til Paaanke, og at i disse Modfordringer kunne gøres gældende uden Kontrasogsmaal, for saa vidt Paastanden ikke gaar ud paa at faa selvstændig Dom for nogen Del af Modfordringens Beløb.

I Soretssager, derunder ogsaa Optagelse af Søforklaringer og Tingsvidner, bortfalder den i D. L. 1—13—12 befalede Indstævning af tidligere førte Vidner. Ved Søforklaringer i disse Sager skal derhos ej heller Reglen efter D. L. 1—4—I, at ustævnt skal være unævnt, være gældende, hvorved dog bliver at bemærke, at en uden Jagttagelse af Bestemmelserne i nævnte Lovens Artikel optaget Søforklaring ikke kan tillægges fuld Beviskraft uden for den enkelte Sag, under hvilken den er optaget.

Eksekution kan ske efter en Doms-Udskrift.

7. Naar Omstændighederne kræve det, kan Soretten, eller i det i § I, 2det Stykke, sidste Punktum ommeldte Tilfælde dens Formand, til Foretagelse af Syns- og Skønsforretninger samt Taksationer udmelde Mænd, der ere bosatte i en af de andre Jurisdiktioner i Amtet.

8. Ved Søforklaringer bør der saa vidt muligt tilvejebringes Oplysning om alle de Kendsgerninger, som ere af Betydning for de ved den paagældende Begivenhed berørte private Interesser.

Retten bør til den Ende minde den Skipper, der i Henhold til Sølovens § 40 gør Anmeldelse om Søulykke, om nøje at iagttage, hvad der i den nævnte Lovbestemmelse er ham paalagt, og om til Søforklaringen at medbringe alle de Folk, som kunne give Oplysning om det forefaldne. Retten bør paase, at de, for hvis Interesser Forretningen kan have Betydning, varsles til at overvære den, for saa vidt det er den, som begærer Søforklaringen, eller Retten selv bekendt, at de eller deres Fuldmægtige ere til Stede i Nærheden, saa at de kunne tilkaldes uden utilbørlig Opsættelse af Søforklaringen, ligesom at der i øvrigt, for saa vidt Tiden tillader det, foretages, hvad der kan gøres for at underrette de vedkommende om Søforklaringens Optagelse, efter Omstændighederne gennem en almindeligt offentlig Bekendtgørelse.

I Retsmødet modtages først Skipperens mundtlige Forklaring, og derefter afhøres de af Skipperen fremstillede eller af Retten indkaldte Vidner, hvert for sig, saaledes at ingen paahører en andens Forklaring. Dog kan Retten, naar den finder, at saadant kan være tjenligt til Sagens rette Oplysning, tilstede, at Skipperen overværer Mandskabets Afhøring.

Findes Forklaringerne ufuldstændige, utydelige eller ubestemte, bør Retten, under Jævnførelse med Skibsdagbogen eller den af Skipperen i Mangel af saadan til Retten indgivne skriftlige Fremstilling, saavel af egen Drift som efter Foranledning af de i Sagen interesserede, søge ved yderligere Spørgsmaal at erholde sikker Kundskab om, hvad enhver selv har erfaret. Retten kan fremdeles opfordre Skipperen og andre vedkommende til at foranstalte Syns- og Skønsforretninger optagne eller andre til Sagens Oplysning tjenlige Skridt foretage. Om fornødent bliver Undersøgelsen at fortsætte gennem flere Retsmøder. — Edfæstelse maa i Reglen først finde Sted, efter at samtlige Vidner ere endelig afhørte.

9. Er Skibet forulykket eller forladt i Søen, eller har det stødt paa Grund og ikke kunnet komme af uden fremmed Hjælp eller Overbordkastning eller Kaping, eller har det lidt Skade ved Ildsvaade eller haft Sammenstød med andet Skib, eller er det uden for dansk Havn blevet ramt af nogen Ulykke, hvorved Menneskeliv er gaaet tabt, — har Retten i Sammenhæng med Søforklaringen paa det offentliges Vegne og med den Myndighed, som tilkommer Retten i offentlige Undersøgelsessager, ved Forhør at søge Aarsagerne til Ulykken saa vidt muligt oplyste.

6. With regard to the proceedings in causes before the Maritime Tribunals the ordinary rules of procedure applicable to the tribunals of the first instance apply; private maritime causes however are dealt with according to the rules of Visitors' Court procedure, in regard to appeals also, and in these matters counter-claims may be presented without cross actions being brought, provided that the claim in question does not purport to require an independent judgment for any part of the amount of the counterclaim.

In maritime causes, including also the reception of maritime reports and making inquiries, the previous summoning of witnesses prescribed in the Danish Law 1—13—12 does not take place. Nor in the case of maritime reports being made in respect of these causes shall the rule according to the Danish Law 1—4—1, that a person who has not been summoned shall remain unknown, apply. In this connection, however, it is to be observed that a maritime report received without observing the provisions of the aforesaid Article of the law, cannot be considered as full evidence according to law outside the particular cause in reference to which it has been received.

Execution may take place on the basis of an exemplification of the judgment.

7. When circumstances require it, a Maritime Tribunal, or in the case mentioned in the last sentence of the second paragraph of § 1 its president, may appoint men domiciled in one of the other jurisdictions of the county for the purpose of making surveys, estimates and valuations.

8. When maritime reports are received, information regarding all the circumstances which are of importance in connection with the private interests touched on on the occasion in question shall as far as possible be procured.

The Tribunal in question shall for this purpose remind the shipmaster, who according to § 40 of the Maritime Law makes a report of an accident at sea, to exactly observe that which is incumbent on him according to the said legal provision, and when making the maritime report to bring with him all those persons who are in a position to give any information regarding the accident. The Tribunal ought to see that those persons concerning whose interests the proceedings may be of importance, are summoned to attend them, where it is known to the person who requires the maritime report or to the Tribunal itself that these persons or their agents are staying in the neighbourhood, so that they may be convened without unduly postponing the maritime report, and also, if time permits, that measures shall be taken to inform the interested persons of the making of the maritime report, according to circumstances by means of an ordinary public proclamation.

At the meeting of the Tribunal the oral explanation of the shipmaster is received first, and then the evidence of the witnesses presented by the shipmaster or summoned by the tribunal is taken, every witness being examined separately so that none of them can hear the evidence given by the other witnesses. The Tribunal may, however, when it is of opinion that such a course may serve to elucidate the matter, permit the shipmaster to be present while the evidence of the crew is being taken.

If a maritime report is considered incomplete, obscure or indefinite, the Tribunal by means of a comparison with the log book, or in default thereof with the written report sent by the master to the Tribunal, both of its own accord and at the request of the persons interested in the matter, ought to try by means of further questions to obtain accurate knowledge in regard to what each witness himself has experienced. In addition the Tribunal may call upon the master and other interested persons to see that surveys and estimates are made, or that other steps required for the elucidation of the matter are taken. If necessary the inquiry shall be continued in several sittings of the Tribunal. — Taking oath must not as a rule take place until all the witnesses have been finally examined.

9. If the vessel has been lost or abandoned at sea, or if she has become stranded and has not been able to get afloat without the assistance of strangers, or without the jettison of goods or objects, or cutting masts and tackle, or if she has suffered damage by fire or collision with another vessel, or if outside a Danish port she has been overtaken by any accident occasioning the loss of human life, the Tribunal shall, in connection with the maritime report, on behalf of the public authority and with the power due to the Tribunal in causes subject to public inquiry, try by means of a public examination to elucidate as far as possible the causes of the accident.

Navnlig bør det undersøges, om Ulykken er en Følge af: a) Fejl eller Mangel ved Skibet, dets Udrustning eller Bemanding; — b) Skibets Overlastning, Lastens urigtige Stuvning eller Fordeling eller dens farlige Beskaffenhed eller utilstrækkelig eller uforsvarlig Ballastning; — c) Forseelse eller Forsømmelse af Skipper eller Mandskab eller af andet Skibs Skipper eller Mandskab; — d) Forseelse eller Forsømmelse af Lods eller Mangler ved Sokort, Fyr, Somærker eller andre til Sikkerhed for Søfarten anbragte Indretninger, eller Forseelse eller Forsømmelse fra de Personers Side, hvem Tilsynet dermed og Betjeningen deraf er betroet.

Er i Tilfælde, som falde ind under denne Paragraf, Søforklaring afgiven i Udlandet i Henhold til Solovens § 40, sidste Stykke, har Skibets Fører at melde sig til Retten i den første danske Havn, hvortil han ankommer med Skibet eller dets Mandskab, for at Søforhor efter de i nærværende Paragraf omhandlede Regler kan blive optaget.

10. Fremkommer der under et Søforhor Omstændigheder, som tyde paa, at der foreligger et Forhold, som kan medføre Strafansvar for Skipperen eller andre, der høre under dansk Strafferet, har Retten at træffe de Foranstaltninger, som maatte være nødvendige for at sikre Beviset og den eller de skyldiges Tilstedeværelse.

Efter dens Beskaffenhed bliver Sagen fremdeles enten at paakende af Soretten i Overensstemmelse med de om offentlige Politisager gældende Regler eller Udskrift af Søforhøret at indsende til vedkommende Overøvrighed, for at Bestemmelse kan tages om Sagens videre Forfølgelse. Naar særlige Omstændigheder tale derfor, navnlig naar der formenes at blive Spørgsmaal om at frakende Skipper Ret til at føre Skib eller Styrmand eller Maskinmester eller Lods Ret til at gøre Tjeneste i saadan Egenskab, kan Justitsministeren efter Overøvrighedens Indstilling henvisse Sagens videre Forfølgelse og Paakendelse til So- og Handelsretten i Kjøbenhavn.

11. Oplyses det, at Anmeldelse og Søforklaring er forsømt i noget Tilfælde, der henhører under § 9, bliver Undersøgelse i den Anledning snarest muligt af vedkommende Overøvrighed at foranstalte ved den Soret, hvortil Anmeldelse burde være sket.

Er der Grund til at befrygte, at et Skib er forlist, uden at Skipper eller nogen, der kunde træde i hans Sted, er reddet, paaligger det Rederen inden 9 Maaneder, efter at han sidst hørte fra eller om Skibet, at gøre Indberetning til Justitsministeren med Oplysning om, naar og hvor det formodes, at Ulykken er sket, og hvad der antages at have foranlediget den. Ministeren tager derefter Bestemmelse om, hvor vidt og ved hvilken Ret nærmere Undersøgelse skal finde Sted. — Den Reder, som forsømmer den ham saaledes paahvilende Forpligtelse, bliver under en ved den almindelige Underret anlagt offentlig Politisag at anse med Bøder til Statskassen fra 10 til 200 Kr.

12. Af enhver i Henhold til § 9 foretagen Undersøgelse saavel som af Undersøgelser i Medfør af § 11, 2det Stykke, og Solovens § 40, sidste Stykke, bliver Udskrift at indsende til Indenrigsministeren, som drager Omsorg for, at der aarlig offentliggøres en statistisk Oversigt over de stedfundne Soulykker med Oplysning om, hvad der i hvert enkelt Tilfælde skønnes at være Aarsagen til samme.

13. Naar der af Førere af fremmede Skibe begæres optaget Søforklaring her i Landet, eller af fremmede Regeringer andrages om Søforhor, forholdes dermed efter Forskrifterne i §§ 8 og 9. Er det svensk eller norsk Skib, bliver derhos, for saa vidt tilsvarende Regel gælder i Skibets Hjemland, Udskrift af det i Medfør af § 9 optagne Søforhor at indsende til Indenrigsministeriet.

14. For Optagelse af Søforklaringer efter § 8 blive de hidtil for saadanne foreskrevne Gebyrer at erlægge, hvorhos Omkostningerne ved de i den nævnte Paragraf omhandlede Tilsigelser afholdes af den, der har begært Søforklaringen. Fritagne for Gebyrer ere dog danske Skibe, som ere undtagne fra Registrering.

For Søforhor eller Undersøgelse i det offentliges Interesse i Henhold til § 9 erlægges intet Retsgebyr.

Notably it ought to be examined whether the accident has been caused by: a) Vices or defects of the vessel, her equipment or crew; — b) Overloading the vessel, improper stowage or distribution of the cargo, or its dangerous nature, or insufficient or defective ballast; — c) Default or negligence on the part of the master or the crew, or on the part of the master or crew of some other vessel; — d) Default or negligence of a pilot or defects of charts, lighthouses, beacons or other arrangements made to safeguard navigation at sea, or default or negligence on the part of those persons to whom the supervision and use of these appliances are confided.

If in a case coming within the provisions of this Article a maritime report has been made abroad according to the last paragraph of § 40 of the Maritime Law, the master of the vessel in question shall present himself to the Tribunal of the first Danish port at which he arrives with his vessel or her crew, in order that a maritime inquiry according to the rules dealt with in this Article may be made.

10. If in the course of a maritime inquiry facts become known which indicate that some circumstance is existent which may bring about the punishment of the master or other persons subject to the Danish Criminal Law, the Tribunal shall take such steps as may be necessary in order to establish the proof and secure the presence of the guilty persons.

According to the nature of the case the cause shall further be judged either by a Maritime Tribunal in accordance with the rules applicable to public police causes, or a transcript of the maritime inquiry shall be sent to the competent superior authority in order that a decision may be taken regarding the further proceedings of the cause. When special circumstances are in favour of such a course, notably when it is considered that the question will arise whether the right of the shipmaster to command a vessel, or the right of mates or engineers or pilots to render further service in such capacities, shall be cancelled, the Minister of Justice, on the proposition of the superior authority, may refer the further proceedings and judgment of the cause to the Maritime and Commercial Tribunal of Copenhagen.

11. If it is established that notification and report have been omitted in any case comprised in § 9, an inquiry on this point shall be made as soon as possible by the competent superior authority before the Maritime Tribunal which ought to have been notified in the matter.

If there is reason to fear that a vessel has been lost without the master or any other person in a position to act as his substitute having been saved, it is incumbent on the shipowner, within 9 months of having had any news from or about the vessel, to report the case to the Minister of Justice, and to inform him when and where it is supposed that the accident has happened, and of the causes which are supposed to have brought about the accident. The Minister thereupon decides whether and before what Tribunal further inquiries shall be made in the matter. — A shipowner who neglects the obligation so incumbent on him, is subject to a fine payable to the Exchequer of from 10 to 200 kr., to be imposed on him by way of a public police action brought before the ordinary Tribunal of the first instance.

12. A transcript of each inquiry made in accordance with § 9, as well as of inquiries made in accordance with § 11, 2nd paragraph, and the Maritime Law § 40, last paragraph, shall be sent to the Minister of the Interior, who shall see that every year a statistical account of the accidents at sea is published; such account shall contain information regarding the circumstances which in each case are considered to have brought about the accident.

13. When it is requested by masters of foreign vessels that maritime reports shall be made in this country, or when foreign Governments demand maritime inquiries, such matters shall be dealt with according to the provisions of §§ 8 and 9. If such reports or inquiries concern Swedish or Norwegian vessels, a transcript of the maritime inquiries made in accordance with § 9 shall also be sent to the Ministry of the Interior, if corresponding rules apply in the home country of the vessel in question.

14. For making maritime reports according to § 8 the dues which have been heretofore prescribed for such reports shall be paid, and the costs of the summonses dealt with in the said Article shall be paid by the person who has asked for the report. Danish vessels not subject to registration are however exempt from dues.

No legal fee is payable for maritime inquiries and inquiries made in the interest of the public in accordance with § 9.

15. Bestemmelserne i §§ 8—14 finde ikke Anvendelse paa Krigsskibe.

16. Denne Lov, hvori der ved kongelig Anordning for Færøernes Vedkommende kan gøres de Lempelser, som ifølge de stedlige Forhold maatte anses fornødne, træder i Kraft den 1ste Januar 1893.

Hvorefter alle vedkommende sig have at rette.

Givet paa Amalienborg, den 12te April 1892.

Under Vor Kongelige Haand og Segl.

Christian R.

(L. S.)

J. Nellemann.

Endnu kan nævnes, at Lov Nr. 75 af 29 Marts 1904 har foreskrevet, at der for danske Skibe, der ere maalte til 20 Register Tons Brutto eller derover, paahviler Rederen Forpligtelse til under Bodeansvar aarlig at afgive statistiske Oplysninger om den af de paagældende Skibe udførte Fart, forsaavidt denne er foregaaet mellem fremmede Lande, mellem saadanne og Danmark eller fra og til Island, Grønland og de dansk-vestindiske Øer. For Partrederiers Vedkommende paahviler denne Pligt den korresponderende Reder. — De nærmere Regler om denne Pligt indeholdes i Indenrigsministeriets Bkg. Nr. 203 af 16 December 1904.

Fremdeles bør her nævnes:

Lov af 1 April 1905 om Søfolks Forzikring mod Folger af Ulykkestilfælde i Søfartsvirksomhed;

Midlertidig Lov af 14 Maj 1909 om Skibes Dybgaende og Lastelinie;

Lov af 13 Februar 1903 om Tilsyn med Dampfartøjer m. m.;

Lov af 14 Maj 1909 om Tilsyn med Sejlskibe m. m.

### Norsk Sørretsprocessen.<sup>1)</sup>

Disse Særdomstole indførtes ved den ældre Solov af 24 Marts 1860; tidligere var „Soretssager“ undergivne de almindelige Civildomstoles Jurisdiktion, og fremdeles haves der for disse Sager kun i første Instans en særegen Domstol, idet Høiesteret, den eneste Appellinstans i „Soretssager“, paadommer disse uden nogensomhelst Forandring i Rettens Sammensætning.

Det Eiendommelige ved Soretterne er Domstolens Sammensætning, hvis Formaål er direkte at udnytte de sømandsmæssige Fagkundskaber og Erfaringer ved Siden af den almindelige Civildommers Retskyndighed for de Afgjørelser og Domme, som bliver at træffe i Soretssagerne. Soretten bestaar derfor af den almindelige Civilunderdommer (i Christiania og Bergen et Medlem af den kollegiale Byret) som Formand og to sagkyndige Soretsmedlemmer som Bisiddere eller Meddomsmænd („Meddommere“).

Omfanget af Soretternes Kompetense fremgaar af Solovens § 312, første Led. Det overvaages paa Embeds Vegne af Domstolene, at der ikke gaar Dom i en „Soretssag“ ved almindelig Civilret og omvendt. Et Sagsanlæg for inkompetent Ret medfører Sagens „Afvisning“; dog er den gjeldende Retspraxis ikke streng i Grænsetilfældene, hvor der kan raade en begrundet Tvil om, hvor Sagen hører hjemme, især naar ingen af Parterne har paastaaet Afvisningen.

De nærmere Regler om Soretternes Organisation og Sammensætning findes i Solovens §§ 313 og 314.

De almindelige Værnethingsregler har i § 315, første og andet Led, faaet en ikke uvigtig Udvidelse, idet Rederen ikke alene kan sagsøges inden den Jurisdiktion, hvor han har sin Bopæl og dermed sit personlige Værnething, men ogsaa efter Sagsøgerens Valg ved Soretten paa Skibets (i Skibsregistret indførte) Hjemsted; det samme gjelder ogsaa for Sagsanlæg mod Skibsfører eller Mandskab, men kun for Forpligtelser, paadragne i Tjenesten. En Begrænsning ogsaa med Hensyn

<sup>1)</sup> Jfr. Hagerup, Forelæsninger over den norske Civilproces, 2det Bind, 2den Udg. (Christiania 1905), S. 191 o. flg.

15. The provisions of §§ 8—14 do not apply to men-of-war.

16. This Law comes into force on the 1st January 1893, and according to Royal Ordinance is subject to the modifications which owing to the local conditions of the Farøe Islands may be deemed necessary.

All persons concerned shall act accordingly.

Given at Amalienborg the 12th April 1892.

Under Our Royal Hand and Seal.

Christian R.

(L. S.)

J. Nellesmann.

It may further be mentioned that Law No. 75 of 29th March 1904 has provided that in respect of Danish vessels which are measured at 20 gross register tons or more, the obligation is incumbent on the shipowner, under the penalty of fines, *every year to make a statistical statement regarding the voyages made by the vessels in question*, provided these voyages have been made between foreign countries, between such countries and Denmark, or from and to Iceland, Greenland and the Danish Islands in the West Indies. In the case of co-owners this obligation is incumbent on the managing owner. — The detailed rules concerning this obligation are contained in the Publication of the Ministry of the Interior No. 203 of 16th December 1904.

Here also ought to be mentioned:

The Law of 1st April 1905 concerning the insurance of seamen against the consequences of accidents occurring in navigation;

The Provisional Law of 14th May 1909 concerning the draught of water and water line of vessels;

The Law of 13th Feb. 1903 concerning the supervision of steamers etc.;

The Law of 14th May 1909 concerning the supervision of sailing vessels etc.

### The Procedure of Norwegian Maritime Tribunals.<sup>1)</sup>

These special Tribunals were established by the older Maritime Law of 24th March 1860; previously "maritime causes" were submitted to the jurisdiction of the ordinary civil Tribunals, and there are still special Tribunals for these causes only in the first instance, as the Supreme Tribunal, the only instance of appeal in "maritime causes", judges these without any change at all being made in the composition of the Tribunal.

The characteristic of the Maritime Tribunals is their composition, the object of which is directly to utilize knowledge and experience in maritime matters, besides the legal knowledge of the ordinary civil judges, for the decisions and judgments to be rendered in maritime matters. A Maritime Tribunal therefore consists of the ordinary civil judge of the first instance (in Christiania and Bergen a member of the composite Town Tribunal) as president, and two experts in maritime matters as assessors or aldermen ("fellow-judges").

The extent of the jurisdiction of the Maritime Tribunals results from § 312, first paragraph, of the Maritime Law. The Tribunals *ex officio* see that a "maritime cause" is not judged by an ordinary civil Tribunal and vice versa. An action brought before an incompetent Tribunal results in the "dismissal" of the cause; the obtaining legal practice is, however, not rigorous in regard to the delimitation of cases as to which there may be legitimate doubt concerning the competent Tribunal, in particular when none of the parties has demanded a dismissal of the cause.

The details of the regulations concerning the organisation and composition of the Maritime Tribunals are to be found in §§ 313 and 314 of the Maritime Law.

The ordinary rules of jurisdiction have in § 315, first and second paragraphs, obtained a not unimportant extension to the effect that the shipowner may not only be sued within the jurisdiction where he has his domicile and consequently his personal jurisdiction, but also according to the choice of the plaintiff, before the Maritime Tribunal of the home port of the vessel (as recorded in the ship's register); the same rule also applies to actions brought against a shipmaster or

<sup>1)</sup> Cf. *Hagerup*, Lectures on Norwegian Civil Procedure, 2nd Volume, 2nd Edition (Christiania 1905), p. 191 et seq.

til Rederen ligger deri, at dette extraordinære Værnething alene kommer til Anvendelse i Soretssager, følgelig kun for Gjeld, der paahviler ham i Egenskab af Reder, men ikke for almindelige civile Forpligtelser. I andet Led har Paragrafen anordnet et ellers i norsk Ret ukjendt forum arresti for saadanne Fordringer, for hvilke Skib eller Ladning hefter, sml. Solovens ellefte Kapitel. Ved Siden af dette Arrestværnething er Rederens eller Ladningseierens personlige Værnething eller Værnethinget efter Paragrafens første Led selvfølgelig ikke udelukkede.

Den egentlige Procesmaade omhandles i Solovens §§ 316—319; der maa her — ligesom under Omtalen af de norske Handelsdomstole, som er indrettede efter Soretternes Monster — henvises til den i Forbindelse med den norske Handelsret givne korte Fremstilling af den almindelige norske Civilproces, hvor der tillige er taget det fornødne Hensyn til Soretterne. Det skal her under Henvisning til Solovens Text kun ganske summarisk yderligere bemærkes, at Forligsmæglingen for „Forligelseskommissionen“, den ellers nødvendige Begyndelse for Sagsanlægget, falder bort i Soretssager som et særskilt Processkridt ligesom i „Gjæsteretssager“ (jfr. Procesfremstillingen) og finder Sted for Soretten ved Sagens Anhängiggjørelse, at Stevningsvarslet for Parter og Vidner er meget kort, indenfor den samme Jurisdiktion kun fra den ene Dag til den næste og 24 Timer mere for hver 20 Kilometers Afstand, videre at Sagens Inkamination altid maa ske i en extraordinær, særlig berammet Retssession („Extraret“), og at den videre Sagsbehandling maa fortsættes for Soretten i saadanne extraordinære Sessioner, indtil Sagen som moden til Afgjørelse er „optaget“ af Soretten. Som kollegial Domstol har Soretten efter den almindelige Bestemmelse i Forordningen af 3 Juni 1796 § 23 for Domsafsigelsen en Frist af indtil 12 Uger; Dommene skal dog altid afsiges saa hurtig som muligt, efterat Proceduren er tilendebragt. Soretternes Domme kan exekveres tre Dage, efterat en Afskrift af Domskonklusionen har været forkyndt for Domfældte. De sædvanlige Procesmaximer er ogsaa gjældende for Soretsproceduren. Undtagelse gjøres dog i Sager mellem Skibsforer og Mandskab, naar Retten ikke har tilladt Benyttelsen af Sagforere, sml. § 317, andet og tredje Led. Den i Paragrafens fjerde Led nævnte Lov af 8 Mai 1869 § 13 Lit. b (her er en Feil i Loven, idet Loven af 8 Mai 1869 § 13 — dog uden reel Forandring af Indholdet — allerede blev ophævet og erstattet ved en Lov af 29 Mai 1879) omhandler Sager, som dreier sig om Gjeldsfordringer paa indtil 120 Kroner (Bagatelproces). De paagjældende Bestemmelser i denne Lov (hvis § 14 derimod gjelder uforandret) indeholder Forskrifter, som tilsigter en hurtig Afgjørelse af den Slags Retssager, saasom om Forenkling af Protokollationen, mundtlig Forhandling o. m. dsl. Som nævnt er Soretternes Domme appellable til Høiesteret, naar Reglerne om Appelsommen tillader dette, ellers er de inappellable; mod den i Appelsommen liggende Hindring gives der Dispensation af Justits- og Politidepartementet, men kun efter en (administrativ) Undersøgelse og Bedømmelse af det enkelte Tilfælde („causa cognita“).

§§ 320—327 omhandler Soforklaringerne. Den i § 322 nævnte Straffeprocesslov af 1 Juli 1887 § 269 siger: „Retten kan af egen Drift (under Forundersøgelsen) foretage saadanne Skridt, som ikke uden Skade kan opsættes, samt hvad der hensigtsmæssig kan gjøres i Forbindelse med andre Rettergangsskridt. Forøvrigt strækker dens Virksomhed sig ikke udover det (af Statsadvokaten eller Politiet) Begjærede og stanser, naar Begjæringen tages tilbage.“ Henvisningen i Solovens § 322 til Straffeprocesslovens § 185 vil sige, naar enten Vidnesbyrdet tilsigtes oplæst under Hovedforhandlingen, eller der er Fare for, at Vidnet ikke vil møde under denne, eller for, at Beviset af andre Grunde vil kunne spildes ved Udsættelsen med Edfæstelsen.



crew, but only in regard to obligations incurred in the service. A limitation with regard to the shipowner is also to be found in the circumstance that this extraordinary jurisdiction only applies to maritime causes, consequently only to debts binding on him in his capacity of shipowner, but not to ordinary civil obligations. In the second paragraph the Article has prescribed a *forum arresti* otherwise unknown in Norwegian Law in regard to claims for which vessel or cargo is liable; cf. Chapter XI of the Maritime Law. Besides this *forum arresti* the personal jurisdiction of the shipowner or the owner of the cargo or the jurisdiction according to the first paragraph of the Article is of course not excluded.

The mode of procedure properly so-called is dealt with in §§ 316—319 of the Maritime Law; reference must here — as in the exposition of the Norwegian Commercial Tribunals which have been established on the basis of the Maritime Tribunals — be had to the brief exposition of the general Norwegian civil procedure, made in connection with the Norwegian commercial law, where also the Maritime Tribunals have been duly considered. With reference to the text of the Maritime Law, it shall only quite summarily be further remarked here that negotiations with a view to obtaining a compromise before a "Compromise Committee", which are otherwise the compulsory commencement of every action, are omitted in maritime causes as a special act of procedure in the same way as in Visitors' Court causes (cf. the Exposition of Procedure), and take place before the Maritime Tribunal at the commencement of the action, that the period for the issue of the summons to the parties and the witnesses is very short, within the same jurisdiction only from one day to the next, and 24 hours more for the distance of each 20 kilometers; further, that the commencement of an action must always take place at an extraordinary, specially convened session of the Court ("Extraordinary session"), and that the further proceedings of the cause must be continued before a Maritime Tribunal at such extraordinary sessions until the cause is ripe for decision is "received" by a Maritime Tribunal. As a collegiate tribunal a Maritime Tribunal according to the ordinary provision of the Ordinance of 3rd June 1796 § 23. has a period not exceeding 12 weeks for rendering judgment; the judgments must, however, always be rendered as quickly as possible on the conclusion of the proceedings. The judgments of a Maritime Tribunal are capable of execution three days after they have been proclaimed to the condemned party. The ordinary principles of procedure apply also to the procedure before the Maritime Tribunals. An exception, however, is made in causes brought between a shipmaster and his crew, when the Tribunal in question has not permitted the use of solicitors; cf. § 317, second and third paragraphs. The law of 8th May 1869 § 13 Letter b., mentioned in the fourth paragraph of the Article (here is an error in the Law, as the Law of 8th May 1869 § 13 — however without really altering its contents — was already repealed and replaced by a Law of 29th May 1879), deals with causes relating to claims not exceeding 120 kr. (insignificant processes). The provisions of this Law regarding this point (§ 14 of which, on the other hand, applies unchanged) contain regulations having in view a quick settlement of that kind of lawsuits, as for example the simplification of the record which is taken down, oral proceedings, etc. As mentioned, the judgments of the Maritime Tribunals may be appealed against before the Supreme Tribunal when the rules concerning the amount concerned in the appeal permit such a course; in the contrary case they cannot be appealed against. The Ministry of Justice and Police may grant exemption from the obstacle arising from the amount concerned in the appeal, but only after an administrative inquiry into and estimate of the particular case (*causa cognita*).

§§ 320—327 deal with maritime reports. The Law of Criminal Procedure of 1st July 1887, § 269, mentioned in § 322, says: "The Tribunal may of its own accord (during the preliminary inquiry) take such steps as cannot without damage be postponed, and undertake that which can appropriately be done in connection with other measures of legal procedure. In general its competence does not exceed that which the Counsel of the Crown or the police require and the Tribunal ceases its operations when a demand is withdrawn". The reference made in § 322 of the Maritime Law to § 185 of the Law of Criminal Procedure has in view the circumstance either that evidence is intended to be read during the principal proceedings, or that it is to be feared that the witness will not appear during these proceedings, or that the evidence for other reasons may be lost when the confirmation by oath is postponed.

I denne Sammenhæng maa der gøres opmærksom paa den norske Lov af 9 Juni 1903 med Tillægslov af 18 September 1909 om Statskontrol med Skibes Sødygtighed. Denne Kontrol er henlagt under Departementet for Handel, Søfart og Industri, og til dette Formaal er der oprettet en ny Afdeling („Kontor“) i Departementet, „Sjøfartskontoret“, hvis Chef maa være kyndig i Søvæsen og Skibsanliggender. Ved kgl. Res. af 21 Marts 1906 er det bestemt, at Loven træder i Kraft fra 1 Mai 1906.

§ 328 handler om Tvangsauktioner, sml. om disse ogsaa de vigtige Bestemmelser i Skibsregistreringslovens § 38, andet Led.

Den i Solovens § 329 omtalte Lov om Lods væsenet af 17 Juni 1869 er ophævet og afløst af Loven af 26 Mai 1899; § 27 No. 10 første og andet Led i den nye Lov bestemmer følgende: „Naar Lods en udsætter sig for Livsfare eller maa bruge mere end sædvanligt Mandskab for at komme til et Fartoi, eller naar et Fartoi er i synkefærdig Tilstand eller paa Grund af Beskadigelse er stedt i Fare for Forlis, skal det være Lods en tilladt, efterat han har udført Fartoiets Lodsning, at tinge med Skibsføreren om høiere Betaling, end han efter Texten kan beregne. Kan Parterne ikke blive enige om Betalingen, afgøres Sagen overensstemmende med §§ 312 og 330 i Lov om Sjøfarten af 20de Juli 1893. Overskjon efter samme Lovs § 329 finder ikke Sted for disse Sagers Vedkommende, hvorimod Sjørettens Afgjørelse i det hele, derunder ogsaa dens Bestemmelse af Betalingens Størrelse, er Gjenstand for Paakjendelse af Hoiesteret.“

Den i Slutningen af § 330 nævnte Appelfrist er efter Konkursloven (af 6 Juni 1863 med Tillægslov af 3 Mai 1899) § 131 4 — fra Tromsø Stift 8 — Uger.

Retsgebyrerne i Sørretssager er fastsatte ved den almindelige Sportellov af 6 August 1897. For Behandling af enhver Domssag skal der erlægges 20 Kroner; hvis Paastanden ikke overstiger 500 Kroner, formindskes Gebyret til 10 Kroner, og hvis den alene gaar op til 100 Kroner eller derunder, til 5 Kroner. For Berømmelse af Extrarets session betales — dog kun engang i samme Sag — 5 Kroner. De samme Gebyrer maa ogsaa udredes af Sagvolderen, ifald han anlægger Mod-søgsmaal. For en Edssag, et Thingsvidne og en Soforklaring betales 10 Kroner. For et Sørretsskjon (sml. den almindelige Procesfremstilling) skal der for det første erlægges det sædvanlige Gebyr 10 Kroner, videre for Berømmelse 5 Kroner og desuden „Extraretsgebyr“, 5 Kroner for den første og 10 Kroner for enhver af de følgende Sessioner. Naar en Part erholder Udsættelse i Sagen, er denne sportelfri de to første Gange, senere udredes tredje Gang 1 Krone, fjerde Gang 2 Kroner og videre 1 Krone mere for hver Gang indtil 5 Kroner. Sportelfrie er altid Sager mellem Skibsfører eller Reder og Mandskab saavel som Soforklaringer, der er foranledigede ved en af de Ombordværendes Død, og Thingsvidner om Skibsmandskabs Død, eller som har til Hensigt at godtgjøre Ansvarsfrihed ved Brud af Toldsegl.

Begge de søkyndige Meddommere faar hver en Godtgjørelse for den første Session af 4 Kroner og for hver af de efterfølgende af 2 Kroner. Naar de deltager i Besigtigelser, Skjon og Taxationer, erholder de hver 8 Kroner for hver Dag, de har tjenstgjort.

I Straffesager efter den borgerlige Straffelovs Kap. 30 og 42 (sml. ovenfor S. 165 o. flg.) tages Lagrettes og Meddomsmændene<sup>1)</sup> af et særligt Udvalg. Efter Straffeprocessloven (af 1 Juli 1887 med de sidste Noveller af 22 Mai 1902 og 17 Mai 1904) § 47, 2 skal der i hver Kommune efter vedkommende Regjeringsdepartements Bestemmelse<sup>2)</sup> istandbringes et særligt Udvalg af Lagrettes- og Meddomsmænd,

<sup>1)</sup> Lagmandsretterne er i Regelen kompetente, naar det gjælder Forbrydelser, for hvilke en strengere Straf end Fængsel i 3 Aar kan anvendes, dog med Undtagelse af grove Tyverier og Indbrud; Forsøg er i denne Henseende ligestillet med fuldbragt Forbrydelse. Straffens Skjærpelse paa Grund af Gjentagelse og ved Sammenstød af Forbrydelser kommer ikke i Betragtning. Det øvrige falder ind under Meddomsretternes Kompetence (Strafprocl. §§ 19 og 22). — <sup>2)</sup> Sml. Skrivelse fra Justits- og Politidepartementet af 10 August 1889, hvor de fornødne Bestemmelser er truffene.

In this connection attention must be drawn to the Norwegian Law of 9th June 1903, with the supplementary Law of 18th September 1909, concerning the State control of the seaworthiness of vessels. This control has been entrusted to the care of the Ministry of Commerce, Navigation and Industry, and for this purpose a new department ("office") has been established within the Ministry, the "Navigation Department", the chief of which must be an expert in maritime matters and matters relating to vessels. It was decided by the Royal Resolution of 21st March 1906 that the Law should come into force on the 1st May 1906.

§ 328 deals with compulsory auctions; cf. also in regard to these the important provisions contained in the second paragraph of § 38 of the Law concerning the registration of vessels.

The Law concerning pilotage of 17th June 1869 mentioned in § 329 of the Maritime Law has been repealed and replaced by the Law of 26th May 1899; § 27 No. 10 in the first and second paragraphs provides as follows: "When the pilot exposes his life to danger or is obliged to use more than the usual assistance in order to reach a vessel, or when a vessel is sinking or on account of damage is exposed to the danger of being lost, the pilot shall be allowed, after having carried out the pilotage of the vessel, to bargain with the shipmaster with a view to obtaining a higher payment than according to the tariff he is allowed to charge. If the parties cannot agree as to the payment, the matter shall be settled according to §§ 312 and 330 of the Law concerning navigation of 20th July 1893. A fresh estimate according to § 329 of the same Law takes place in regard to these matters, whereas on the other hand the decision of the Maritime Tribunal, including also its decision regarding the amount of the payment, is generally subject to appeal before the Supreme Tribunal."

The period of appeal mentioned at the end of § 330 is, according to the Bankruptcy Act (of 6th June 1863, with Supplementary Act of 3rd May 1899) § 131, four — in the case of the diocese of Tromsø eight, weeks.

The legal fees in maritime causes have been fixed by the general Law concerning legal fees of 6th August 1897. For the proceedings of every cause in which judgment is rendered 20 kroner shall be paid; if a lawsuit does not exceed 500 kroner, the fee is reduced to 10 kroner, and if it does not exceed 100 kroner, to 5 kroner. When an extraordinary session is convened 5 kroner are to be paid, but only once in the course of the same cause. The same fees must also be paid by the defendant, if he makes a counterclaim. 10 kroner are to be paid for a cause in which oath is taken, an inquiry or a maritime report is made. For a maritime estimate (cf. the exposition of the ordinary procedure) in the first place the ordinary fee of 10 kroner shall be paid, in addition 5 kroner for convening the Tribunal and furthermore an "additional fee" of 5 kroner for the first and 10 kroner for each of the succeeding extraordinary sessions. When a party obtains a postponement in a cause, such postponement is free of charge for the first two times; subsequently 1 krone is to be paid for the third time, 2 kroner for the fourth time and 1 krone further for each time up to 5 kroner. Causes between a shipmaster or shipowner and the crew, as well as maritime reports occasioned by the death of some person on board, and inquiries concerning the death of some member of the crew, or causes having in view to prove the responsibility in case of breach of customs seals are always free of charge.

Each of the members of the Tribunal who are experts in maritime matters is entitled to remuneration for the first session of 4 kroner and for each of the succeeding sessions of 2 kroner. When they take part in surveys, estimates and valuations, they are entitled to 8 kroner each for every day of service.

In criminal matters, according to Chap. 30 and 42 of the Civil Criminal Law (cf. above p. 165 *et seq.*) the jurymen and assessors<sup>1)</sup> are chosen from amongst a select committee. According to the Law of Criminal Procedure (of 1st July 1887 with the amendments of 22nd May 1902 and 17th May 1904) § 47, par. 2, there must in every parish, in accordance with the decision<sup>2)</sup> of the competent Ministry,

<sup>1)</sup> The tribunals employing a jury are as a rule competent when crimes are concerned for which a severer punishment than imprisonment for 3 years can be applied, with the exception however of gross thefts and housebreaking; an attempt is in this respect on a par with a completed crime. The aggravation of the punishment on account of repetition and concurrence of crimes does not come into consideration. Other offences belong to the competency of tribunals employing assessors (§§ 19 and 22 of the Criminal Procedure). — <sup>2)</sup> Cf. the Circular from the Ministry of Justice and Police of 10th August 1889, in which the necessary regulations have been made.

som er kyndige i Sovæsen og Skibsanliggender. Ved Meddomsretterne tages i saadanne Sager altid begge Doms mænd af dette Udvalg (§ 370); i Lagmandsretterne bliver efter Begjæring af en af Parterne, naar Lagmanden finder Begjæringen befoiet, fire Lagrettesmænd tagne af det ovennævnte Udvalg; i Sager mellem Skibsforer og Mandskab bor kun to af disse Lagrettesmænd være Skibsforere (§ 55, 4). Antallet af de sokyndige Lagrettesmænd maa ikke ved Parternes Udskydelse ormindskes til under Halvdelen (§ 318, 1).

Sølovens § 331 mangler nu enhver praktisk Betydning.

## Svensk Lag om inteckning i fartyg.

Gifven Stockholms slott den 10 Maj 1901.

(Svensk Författningssamling 1901, No. 26.)

Vi Oscar, med Guds nåde, Sveriges, Norges, Götes och Vendes Konung, göre veterligt: att Vi, med Riksdagen, funnit godt i nåder förordna som följer:

§ 1. Fartyg, som har en dräktighet af tjugu registerton eller derutöfver och är i fartygsregistret infördt, må, der egaren det medgifver, intecknas för fordran, efter ty här nedan sägs; och njute, der det skett, fordringsegaren panträtt i fartyget. Tillhör fartyget flere gemensamt, må ej inteckning meddelas, med mindre samtliga delegare dertill lemnat medgifvande.

Ej må inteckning meddelas utan för visst belopp i penningar, ej heller i fartygslott eller i flera fartyg för samma fordran.

2. Medgifvande af inteckning i fartyg skall tecknas å handling, hvarå fordran grundas, samt innefatta uppgift om det nummer, hvarunder fartyget är i fartygsregistret infördt; och varde medgifvandet af vittnen styrkt.

3. Inteckning i fartyg sökes hos Stockholms rådstufvurätt.

4. Då inteckning sökes, skall fordringshandlingen i hufvudskrift till rätten ingifvas; och låte rätten handlingen offentligen uppläsas samt införas i protokollet öfver inteckningar i fartyg.

5. Finnes ej å handlingen bevittnadt medgifvande, som i 2 § sägs, varde ansökningen afslagen.

6. Ej må inteckning beviljas, der ej den, som inteckningen medgifvit, är i fartygsregistret inskrifven såsom egare af fartyget.

Öfverlåter någon till annan fartyg eller fartygslott, och har, innan ny egares fång anmäles till fartygsregistret, inteckning blifvit sökt på grund af tidigare egares medgifvande, utgöre öfverlåtelsen ej hinder för inteckningens beviljande.

Sökes inteckning samma dag ny egares fång anmäles till fartygsregistret eller derefter, skall ansökningen afslås, utan så är att nye egaren iklädt sig förbindelse att låta fartyget intecknas på grund af tidigare egares medgifvande eller eljest är med honom lika förbunden.

7. Sökes inteckning, och är ej ansökningen grundad på medgifvande af den, som, enligt hvad fartygsregistret utvisar, byggt fartyget, skall vid rätten styrkas, att från honom eganderätten öfvergått till den, som inteckningen medgifvit. Hvad sålunda är stadgadt ege dock ej tillämpning, der fartyget varit i utländsk ego eller blifvit i registret infördt innan denna lag trädt i kraft, utan skall i ty fall, så framt ej eljest laga hinder möter, inteckning beviljas, der den, som inteckningen medgifvit, antingen blifvit vid fartygets införande i registret antecknad såsom egare eller bevisligen härleder sin rätt från den först inskrifne egaren.

be elected a select committee of jurymen and assessors who are experts in matters relating to maritime trade and vessels. In the case of Tribunals where assessors are employed, the two assessors are always chosen from amongst this select committee (§ 370); in the Tribunals employing a jury at the request of one of the parties and when the president ("lagmand") is of opinion that the request is reasonable, four jurymen are chosen from amongst the above-mentioned select committee: in causes between a shipmaster and his crew only two of these jurymen ought to be shipmasters (§ 55,4). The number of the jurymen who are experts in maritime matters must not, owing to the rejection of the parties, be reduced to less than the half of their number (§ 318,1).

§ 331 of the Maritime Law is now devoid of any practical importance.

## Swedish law concerning the registration of securities on ships.

Given at Stockholm Castle the 10th May 1901.

(Svensk Forfattningssamling 1901, No. 26.)

We Oscar, by the Grace of God, King of Sweden, Norway, the Goths and the Wends, make known: that We, in concert with the Riksdag, have found good graciously to order as follows:

§ 1. Any ship having a tonnage of twenty tons register burden or upwards and entered on the Register of ships must, if the owner gives his consent, be registered as security for claims in the manner hereinafter provided, and where this has taken place the creditor has a pledge-right on the ship. If the ship belongs to several persons in common, such registration must not take place unless all the part-owners have given their consent.

Registration as security may only be effected for a definite sum of money, and the security may not be granted on part of a ship nor on several ships in respect of the same claim.

2. The consent to a registration as security in reference to a ship shall be written on the document of title on which the claim is based, and shall contain an indication of the number under which the ship has been entered on the Register of ships; such consent shall be certified by witnesses.

3. All such registrations in respect of ships shall be demanded of the Town Hall Tribunal of Stockholm.

4. When the registration is demanded, the original document of title of the claim shall be presented to the Tribunal, which shall see that the document of title is read in public and taken down in the record for registration of securities on ships.

5. If no consent certified by witnesses has been written on the document of title as provided in Art. 2, the request shall be rejected.

6. The registration must not be granted in case the person who has given his consent has not been entered on the Register of ships as owner of the ship in question.

If any person transfers a vessel or share in a vessel to another person, and before the change in the ownership has been recorded in the Register of ships, registration as security has been demanded on the basis of the consent of the former owner, the transfer does not prevent the registration as security from being granted.

If the registration as security is demanded on the same day on which the change in the ownership is declared in the Register of ships or subsequently, the request shall be rejected unless the new owner has taken upon himself the obligation to allow the vessel to be registered as security on the basis of the consent of the former owner or is jointly liable with him.

7. If the registration as security is applied for, and the request is not based on the consent of the person who according to the Register of ships has built the ship in question, it shall be certified before the Tribunal that the proprietary right has been transferred from him to the person who has given his consent to the registration. This provision does not however apply if the ship has been owned by a foreigner or entered on the Register before this Law comes into force, and in such case, provided there is otherwise no legal obstacle, the registration shall be granted if the person giving his consent thereto is designated as owner in the entry of the ship on the Register, or if he can prove that he has acquired the right of ownership from the owner first entered on the Register.

Har fartyget i fem år näst före ansökningen varit i registret infördt, och finnes den, som inteckningen medgifvit, hafva under hela den tid varit i registret inskrifven såsom egare eller härleder han bevisligen sin rätt från den, som vid början af samma tid var i nämnda egenskap inskrifven, skall, ändå att annan upplysning om eganderätten ej vinnes, ansökningen bifallas, der ej eljest laga hinder möter.

Ej må i inteckningsärende andra än skriftliga bevis gälla i fråga om åtkomst till fartyg.

8. Varder hos rätten upplyst, att klander å den af sökanden uppgifne fartygs-egarens åtkomst blifvit vid domstol anhängiggjordt, och visas ej att det klander är genom laga kraft egande beslut ogilladt, varde ansökningen afslagen.

9. Upplyses, att före den dag inteckningen söktes eller ock samma dag ansökningen gjordes fartyget eller lott deri tagits i mät, och visas ej att utmätningen upphört att gälla, skall ansökningen afslås.

10. Afträdes fartyg eller fartygslott till konkurs, medan ansökan om inteckning i fartyget är på pröfning beroende, må ansökningen af rätten pröfvas utan hinder af konkursen, men verkan af inteckningen, der den beviljad varder, bestämmes på sätt särskildt är stadgadt.

11. Finnes ej ansökan om inteckning böra genast afslås, anskaffe rätten, innan yttrande öfver ansökningen meddelas, från den myndighet, som förer fartygsregistret, afskrift af hvad deri finnes infördt om det fartyg ansökningen afser.

12. Då inteckning blifvit beviljad, teckne rätten bevis derom å fordringshandlingen.

13. Panträtt, som genom inteckning i fartyg vinnes, omfattar jemväl fartygets tillbehör. Under tillbehören innefattas icke proviant eller bränsle, ej heller å ångfartyg kol eller andra för maskinens drift afsedda ämnen.

14. Är egare af fartyg på grund af tagen försäkring eller eljest berättigad till ersättning för skada å fartyget; den ersättning häfte icke i fartygets ställe för fordran, som är i fartyget intecknad.

15. Ej må panträtt, som inteckning medför, särskildt göras gällande i viss lott af det intecknade fartyget.

16. Inteckning i fartyg skall förnyas i den ordning, som i 17 § bestämmes, första gången inom tio år sedan den beviljades, och sedermera inom tio år från hvarje förnyelse. Sker det ej, vare inteckningen förfallen, ändå att inom nämnda tid vidtagits sådan åtgärd, som i sista stycket af 18 § sägs.

17. Vill någon låta förnya inteckning i fartyg, uppvisse hos inteckningsdomstolen fordringshandlingen i hufvudskrift; och varde bevis om förnyelsen der tecknad å handlingen. Sökanden stånde ock fritt att inför annan underrätt förete inteckningshandlingen: den rätt låte, då sådant sker, i sin dombok korteligen intagas hvad handlingen innehåller med dag och årtal, då den utgafs, när och under hvilken paragraf i protokollet inteckningen är beviljad och när inteckningen förnyades, nedsattes eller annorledes förändrades, om det skett; teckne ock bevis å handlingen, att den varit företedd till vinnande af inteckningsförnyelse: sedan ingifve sökanden protokollet deröfver till inteckningsdomstolen inom tid, som i 16 § sägs; och vare detta så gilt, som om handlingen der blifvit företedd.

18. Vill någon låta inteckning helt och hållet eller för visst belopp dödas, uppvisse fordringshandlingen i hufvudskrift för inteckningsdomstolen; och varde bevis om dödandet der tecknad å handlingen.

If the ship has been entered on the Register for five years before the request, and if it is found that the person who has consented to the registration as security has during all this time been entered on the Register as owner, or if he can prove that he has derived the right of ownership from the person who at the commencement of such period was entered in that capacity, the request shall be granted, provided no other information is obtained with regard to the right of ownership, and there is no other legal obstacle.

In these registration matters only proofs in writing shall be received in regard to the rights of ownership of ships.

8. If it is established before the competent Tribunal that the ownership of the proprietor of the ship as indicated by the applicant has been the subject of judicial litigation, and if it is not proved that the litigation has been declared ill founded in law by a final decision, the request shall be rejected.

9. If it is established that before the day on which the registration was demanded, or on the same day as the request was made, the ship or a share in it had been seized, and if it is not proved that the seizure has ceased to be legally effective, the request shall be rejected.

10. If a ship or share in a ship becomes subject to bankruptcy proceedings while the request for registration is under examination, the request must be examined by the Tribunal in spite of the bankruptcy, but the effect of the registration in case it is granted is determined according to special legal provisions.

11. If it is considered that the request of registration ought not to be rejected forthwith, the Tribunal, before a decision is given concerning the request, shall obtain from the authority charged with the keeping of the Register of ships, a copy of what has been entered therein in regard to the ship which the request has in view.

12. When the registration has been granted, the Tribunal shall make a note to this effect on the document of title of the claim.

13. A pledge-right resulting from the registration as security of a ship also comprises the appurtenances of such ship. The appurtenances do not include provisions or fuel, or coals or other materials intended for the working of the engines on board steamers.

14. If the owner of a ship, in virtue of an insurance or otherwise, is entitled to compensation for damage to his ship, such compensation is not a security in lieu of the ship for the claim registered on the vessel.

15. A pledge-right resulting from the registration as security shall not be exercised separately in respect of a particular share in the registered vessel.

16. All registrations of ships as security shall be renewed in the manner prescribed by § 17, the first time within ten years from the day on which the registration was granted, and subsequently within ten years from every renewal. If this does not take place the security in question becomes extinct, even when within the period mentioned the measure referred to in the last paragraph of § 18 has been adopted.

17. If a person wishes to renew a registration of a ship as security, he shall produce before the Tribunal which granted the registration the original document of title of his claim, and a note certifying the renewal shall be written on the document. The person who makes the request is also at liberty to produce the document of title of his claim before another Tribunal of the first instance: this Tribunal shall in such case enter in its record a brief statement of the contents of the document of title, mentioning the day and year of its issue, when and under what number in the Register the registration as security was granted, and when the registration was renewed, with the alterations as to its ranking or other modifications, if any; further, a note shall be made on the document of title showing that it has been presented with a view to obtaining the renewal of the registration: the person making the request shall subsequently produce this statement to the Tribunal which granted the registration within the period mentioned in § 16; and the effect of this production shall be the same as if the document of title itself had been presented to this Tribunal.

18. If a person wishes to annul the whole of a registered security or a certain part of it, he shall present the original document of title of the claim to the Tribunal which granted the registration; a note mentioning the annulment shall be written on the document of title at the Tribunal.

Vill någon låta inteckning under annan nedsättas, förfares i enlighet med hvad angående intecknings dödande nu är sagdt.

19. Är helt fartyg såldt efter utmätning eller eljest i den ordning, som om utmätt fartyg finnes stadgad, vare, sedan köpeskillingen blifvit emellan borgenärerna fördelad, inteckning för fordran, som antingen alldeles icke eller endast till någon del kunnat af köpeskillingen gäldas, utan verkan. Sådan inteckning varde, ändå att inteckningshandlingen ej i hufvudskrift företes, dödad, der ny egare af fartyget eller lott deri, sedan försäljningen vunnit laga kraft, det äskar och till inteckningsdomstolen ingifver bevis om de inteckningar, som vid fartygets försäljning deri funnos, så ock handling, som visar köpeskillings fördelning, samt intyg att fördelningen blifvit godkänd eller vunnit laga kraft.

20. Varder intecknad fartyg, som efter timad skada förklarats icke vara iståndssättligt, derefter försåldt, upphøre panträtten i fartyget; och må, på ansökan utaf ny egare af fartyget eller lott deri, inteckningen dödas, ändå att fordringshandlingen icke i hufvudskrift företes.

Har inteckning, på grund deraf att konkurs inträffat, blifvit genom laga kraft egande beslut förklarad vara utan verkan, då må ock, på ansökan af egare, inteckningen dödas utan hinder deraf, att fordringshandlingen icke i hufvudskrift företes.

21. Har intecknad fordringshandling kommit i gäldenärens eller, der det intecknade fartyget tillhör annan, i dennes hand, och är ej sådant fall för handen, att inteckningen kan dödas utan att handlingen i hufvudskrift företes, må den ånyo utgifvas med fortfarande inteckningsrätt.

22. Borgenär, som för sin fordran har inteckning till högre belopp än fordringen, njute, i den mån sådant för fulla gäldandet af hans fordran nödigt är, säkerhet i det intecknade fartyget till hela det belopp, hvarå inteckningen lyder.

23. Är intecknad fartyg i annans ego än gäldenärens, och räcker ej fartyget till intecknade gäldens betalning, vare egaren ej till ansvar för bristen bunden, der han ej gälden å sig tagit eller eljest därför i gäldenärens ställe svara bör.

24. Låter innehafvare af intecknad fordran ny egare till fartyget å inteckningshandlingen teckna förbindelse, hvarigenom han öfvertager skulden, vare förre gäldenären fri från sin förbindelse, der ej annorlunda är aftaladt.

25. Har innehafvare af skuldförbindelse, till säkerhet hvarför inteckning blifvit fastställd i fartyg, som sedermera kommit i annan egares hand, låtit inteckningen utan samtycke af förbindelsens utgifvare helt och hållet eller för visst belopp dödas eller ock förfalla eller nedsättas, och kan fordran till följd deraf icke ur fartyget uttagas, vare utgifvaren från ansvar för fordringen fri. Hvad nu är sagdt om förbindelsens utgifvare gälle ock om annan egare af fartyget, som skulden å sig tagit eller eljest därför i utgifvarens ställe svara bör.

26. Varder intecknad fartyg utmättningsvis såldt, njute alla borgenärer, som hafva inteckning i fartyget, genast derur betalning hvar efter sin rätt, ändå att deras fordringar eljest ej äro till betalning förfallna; och vare förre egaren fri från ansvar för hvad af köpeskillingen kunnat gäldas.

27. Är fartyg intecknad för fordran, och öfvergår i annat fall än i förra stycket af 20 § sägs eganderätten till fartyget genom frivillig öfverlåtelse till utländsk man, eller öfverlåtes å utländsk man så stor lott i fartyget, att detta jemlikt 1 § sjölagen ej må såsom svenskt anses, vare, der ej inteckningshafvaren till öfverlåtelsen samtyckt, öfverlåtaren med allt sitt gods ansvarig för fordringen, ändå att sådan ansvarighet ej förut honom ålag; och må, ehvad aftal om förfallotiden gjordt är, beloppet genast hos öfverlåtaren utsökas. Äro flere delegare i fartyget, vare de, som i öfverlåtelsen tagit del eller dertill samtyckt, en för alla och alla för en ansvarige för den intecknade fordringen, der de ej redan förut voro till sådan ansvarighet



If a person wishes to register his security subject to that of some other person, this shall be done in accordance with the procedure above prescribed concerning the annulment of registered securities.

19. If an entire ship has been sold consequent on a seizure or otherwise in accordance with the provisions concerning the seizure of ships, all securities for claims which can either not at all or only partially be paid out of the price, shall be without effect if the price has already been distributed between the creditors. Such securities shall be annulled, even when the original documents of title of the claims have not been presented, if the new owner of the ship or a new part-owner, after the sale has become valid according to law, demands such annulment, and produces before the Tribunal which granted the registration a statement of the registered claims which at the time of the sale of the ship were found to charge the ship, the instrument proving the distribution of the price, and an attestation that the distribution has been approved or become valid according to law.

20. If a ship registered as security which, after having sustained damage, is declared not to be fit for repairing, is subsequently sold, the pledge-right on such ship ceases, and at the request of the new owner of the ship or a share in it, the registration must be annulled even when the original document of title of the claim has not been produced.

If a security owing to bankruptcy has been declared invalid according to law, the registration at the request of the owner must also be annulled in spite of the circumstance that the original document of title of the claim has not been produced.

21. If the document of title of a claim registered as having security has come into the hands of the debtor, or in case the ship belongs to some other person, into the hands of this person, and if we have not such a case before us that the security may be annulled without the original document of title being presented, the document of title must be issued anew with a preservation of the right of security.

22. Creditors who hold securities in excess of the amount of their claims, enjoy in the measure in which it is necessary for the full satisfaction of their claims, security in the ship affected for the total amount of their registered claims.

23. If a ship registered as security is the property of some person other than the debtor, and the ship in question is not sufficient for the payment of the registered claim, the owner is not liable for the deficiency unless he has taken the debt upon himself or for some other reason is liable in the place of the debtor.

24. If the person having a claim secured by registration allows a new owner of the ship to make a note on the document of title of the claim by which he takes the debt upon himself, the former debtor is discharged from his liability if nothing to the contrary has been stipulated.

25. If the person having a claim secured by registration on a ship which has subsequently passed into the hands of another owner, has permitted the annulment of the security in whole or in part without the consent of the original debtor, or has allowed it to become void or to lose its priority, and if for such reason the claim cannot be satisfied out of the ship, the original debtor is discharged from his liability in regard to the claim. What has just been said concerning the original debtor applies also to any owner of the ship who has taken the debt upon himself or for some other reason is answerable in the place of the original debtor.

26. If a vessel registered as security is sold in consequence of a seizure, all the creditors having registered claims on the vessel shall forthwith be paid, each according to his rights, although their claims may not be due for payment; and the former owner is discharged from liability in regard to what may have been paid out of the price.

27. If a ship has been registered as security for a claim, and in any other case than that which is mentioned in the first paragraph of § 20, the ownership of the ship is passed by a voluntary transfer to a foreigner, or if so large a share in the ship is transferred to a foreigner that the ship according to § 1 of the Maritime Law cannot be considered Swedish, the transferor, in case the person entitled to the security has not given his consent to the transfer, is liable with all his property for the claim, although such obligation was not previously incumbent on him; and the amount, whatever may have been stipulated as to the time for payment, may be forthwith demanded from the transferor. If there are several part-owners of

förbundne; och vare fordringen genast emot enhvar af dem förfallen till betalning.

28. Varder intecknadtt fartyg af egaren vanvårdadt eller förderfvadt, så att inteckningshafvarens säkerhet märkligen minskas, eller har fartyget i den ordning sjölagen stadgar förklarats icke vara iståndsättligt, eller inträffar sådan förändring i afseende å de omständigheter, som i 1 § sjölagen omförmälas, att fartyget upphör att vara svenskt, ege inteckningshafvaren att ur fartyget njuta betalning för sin fordran, ändå att den ej är förfallen.

29. Då utmätning skett af fartyg, som blifvit i fartygsregistret infördt, eller jemlikt 51 § konkurslagen äskats, att intecknadtt fartyg må utmätningssvis säljas, skall, sedan i enlighet med 85 § utsökningslagen bevis härom inkommit till inteckningsdomstolen, beviset å nästa rättegångsdag för inteckningsärenden uppläsas och införas i protokollet öfver inteckningar i fartyg. Visas, att utmätningen upphäfts, eller att frågan om fartygets försäljning eljest förfallit, varde ock sådant i protokollet antecknadtt.

Har vid försäljning af fartyg i den ordning, utsökningslagen bestämmer, fordran, som är i fartyget intecknad, kunnat till fullo gäldas af köpeskillingen, skall anmärkning derom göras i det protokoll, som nyss är sagdt, der ny egare, sedan försäljningen vunnit laga kraft, det äskar och till rätten ingifver bevis om de inteckningar, som vid fartygets försäljning deri funnos, så ock handling, som visar köpeskillingens fördelning, samt intyg att fördelningen blifvit godkänd eller vunnit laga kraft.

30. Inkommer till inteckningsdomstolen handling, som utvisar, att fartyg i den ordning sjölagen stadgar förklarats icke vara iståndsättligt, och är fartyget för gäld intecknadtt, vare lag som i 29 § sägs om bevis rörande utmätning af fartyg.

31. I öfverensstämmelse med protokollet öfver inteckningar i fartyg skall vid inteckningsdomstolen föras bok, så inrättad, att deraf lätteligen kan ses hvarje fartyg, deri inteckning blifvit sökt, tiden då det skett, sökandens namn, beloppet af fordran, hvarför inteckning är sökt, så ock, der inteckning blifvit beviljad eller afslagen, förnyad, nedsatt eller dödad, tiden då sådant skedde. Då enligt 29 eller 30 § anteckning skett i protokollet, varde ock det i boken anmärkt.

De närmare föreskrifterna om bokens förande meddelas af Konungen.

32. Å protokollsutdrag, som utfärdas i ärende angående inteckning i fartyg skall tecknas afskrift af hvad om ärendet blifvit infördt uti den i 31 § nämnda bok

33. Ärende angående inteckning i fartyg må upptagas endast å måndag eller, om helgdag då inträffar, nästa söckendag derefter; dock att fråga om inteckningsförnyelse må handläggas jemväl å annan rättegångsdag.

34. Den, som ej nöjes åt domstols beslut i ärende angående inteckning i fartyg, ege deröfver föra klagan i enahanda ordning, som gäller för fullföljd af talan mot beslut i ärende angående inteckning i fast egendom.

35. Har beslut, hvarigenom ansökan om intecknings beviljande helt och hållet eller till någon del afslagits, blifvit till följd af besvär ändradt af högre rätt, vare sökanden pliktig att inom tre månader från det utslaget om ändringen vunnit laga kraft det hos inteckningsdomstolen förete, vid äfventyr att i annat fall den inteckning, som på grund af utslaget beviljas, gäller så som vore den sökt först å den dag, utslaget vid inteckningsdomstolen företes.

the ship, all those who have taken part in the transfer or given their consent to it shall be jointly and severally liable for the registered claim, though they were not previously liable therefor; and the claim shall forthwith be capable of enforcement in respect of each of them.

28. If a ship registered as security is impaired or destroyed by its owner so that the security of the registered creditor is considerably diminished, or if the ship has been declared unfit for repairs in accordance with the provisions of the Maritime Law, or if such a change in regard to the circumstances mentioned in § 1 of the Maritime Law occurs that the ship ceases to be Swedish, the registered creditor is entitled to payment of his claim out of the ship, although the claim is not due for payment.

29. If a seizure is effected on a ship which has been entered on the Register of ships, or if in accordance with § 51 of the Bankruptcy Act it has been demanded that a registered ship shall be sold on account of a seizure, and in accordance with § 85 of the Law of Attachment proof to this effect has been produced before the registration Tribunal, the proof shall be read on the next day on which the Tribunal sits in respect of registered securities and be taken down in the record for registration of securities on ships. If it is proved that the seizure has been annulled, or that there is no longer any question as to the sale of the ship, this shall also be taken down in the record.

If by the sale of a ship effected according to the provisions of the Law of Attachment it has been possible to pay the claims registered on the vessel in full out of the price obtained, such fact shall be mentioned in the said record, if the new owner, on the sale becoming valid according to law, makes a request to this effect and produces proofs before the Tribunal of the secured claims which were found in the Register at the time of the sale of the vessel, and also produces the instrument proving the distribution of the price, and the attestation that such distribution has been approved or become valid according to law.

30. If a document is produced before the registration Tribunal establishing that a ship has been declared to be unfit for repairs as prescribed by the Maritime Law, and if the vessel is registered as security for debts, the proceedings shall be applied which are prescribed in § 29 in regard to proofs concerning the seizure of vessels.

31. In accordance with the record taken down concerning the registration of a ship as security, the registration Tribunal shall keep a book arranged in such a manner that each ship on which registration as security has been demanded can easily be ascertained, also the time at which the demand was presented, the name of the applicant, the amount of the claim for which registration has been demanded, and also, if this has taken place, the time when the registration has been granted or rejected, renewed, reduced or annulled. When, according to § 29 or 30, statements have been taken down in the record, such statements shall also be mentioned in the aforesaid book.

The detailed regulations regarding the keeping of this book shall be established by a Royal Ordinance.

32. The exemplification of the record of a Tribunal regarding affairs connected with the registration of ships as security shall contain a copy of the entries in the book mentioned in § 31 in regard to the transaction.

33. Transactions concerning the registration of ships as security must only be dealt with in sittings of the Tribunal which take place on Mondays, or if this day is a holiday, on the succeeding business day; questions as to renewals of such registrations, however, must be dealt with on any other business day on which the Tribunal in question sits.

34. A person who is not satisfied with the decision of a Tribunal in regard to the registration of a vessel as security, may appeal against such decision in the same manner as in the case of appeals against decisions in matters concerning the registration of mortgages of immovables.

35. If a judgment by which a demand for registration of a security has been rejected in whole or in part, and on appeal has been modified by a higher Tribunal, it is incumbent on the applicant, within three months from the day on which the modifying judgment has become valid according to law, to present the document in question to the Tribunal which registers securities; in default of this being done, the registration of the security which on the basis of the judgment has been granted, is considered as not having been applied for until the day on which this judgment is produced before the registration Tribunal.

36. Utan hinder af inteckning må tvist om intecknad fordrans giltighet lagligen pröfvas.

37. Varder inteckning i fartyg beviljad på grund af medgifvande af annan än rätt egare, och är ej sådant fall för handen, som i andra stycket af 6 § sägs, vare inteckningen ogill. I fråga om rätt att tala å inteckning, som, efter det någon förklarats skola för död anses, tillkommit på grund af medgifvande af den, som hans egendom tillträd, gälle hvad särskildt är stadgad.

38. Vill inteckningshafvare vid domstol utsöka sin fordran ur det intecknade fartyget, eller yppas tvist om giltigheten af meddelad inteckning, gånge saken till rådstufvurätten i den stad, der den, som käres till, har sitt bo och hemvist, eller, om denne har sitt hemvist å landet eller i stad der rådstufvurätt ej är, till den rådstufvurätt, som är närmast.

Tillhör intecknad fartyg flere redare, ege i sak, som nu är sagd, inteckningshafvaren söka hufvudredaren eller, der hufvudredare ej är vald, någon af redarne, hvilken han helst vill.

39. Öfvergår utländskt fartyg i svensk ego, eller inträffar eljest i afseende å fartyget sådan förändring, att det jemlikt 1 § sjölagen skall såsom svenskt anses, och är fartyget för fordran intecknad, ege inteckningshafvaren genast njuta betalning ur fartyget, der han ej förbundit sig att låta med betalningen anstå, ändå att sådan förändring timar.

Har ej inteckningshafvaren inom sex månader från det fartyget blifvit i fartygsregistret här i riket infördt genom stämning eller lagsökning kräft betalning, vare inteckningen derefter utan verkan.

Denna lag träder i kraft den 1 Januari 1902.

Det alla, som vederbör, hafva sig hörsamligen att efterrätta. Till yttermera visso hafve Vi detta med egen hand underskrifvit och med Vårt Kongl. sigill bekräfta låtit.

Stockholms slott den 10 Maj 1901.

Oscar.  
(L. S.)

L. Annerstedt.

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36. The registration as security for a claim does not prevent disputes concerning the validity of the claim from being examined in litigations in due course of law.

37. If registration of a ship as security is granted on the basis of the consent of some other person than the legitimate owner, and we have not such a case before us as is mentioned in the second paragraph of § 6, the security in question is invalid. As regards the right of contesting the validity of a registration which, upon the declaration of the presumed death of a person, has been granted on the basis of the consent of the person who has taken possession of the deceased's property, the special legal provisions on this subject shall apply.

38. If the holder of a registered security wishes to realise his claim by execution against the registered ship, or if the validity of the registration granted is contested, the cause will be dealt with by the Town Hall Tribunal of the town where the defendant has his residence and home, or if he has his home in the rural districts or in a town where there is no Town Hall Tribunal, by the nearest Town Hall Tribunal.

If a ship registered as security belongs to several owners, the holder of the security shall in such cases look to the managing owner for payment or, in case no managing owner has been appointed, to the owner whom he prefers.

39. If a foreign ship becomes the property of a Swede, or otherwise such a change in regard to the ship takes place as causes her to be considered as Swedish according to § 1 of the Maritime Law, and if such ship has been registered as security for a claim, the holder of the security has the right to demand immediate payment against the ship, provided that he has not agreed to allow the payment to be postponed even if such a change should occur.

If the holder of the security has not, within six months from the day on which the ship in question has been entered on the Register of ships in this Kingdom, demanded payment by means of a summons or an executive action, the registration as security after this period ceases to be effective.

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This Law comes into force on the 1st January, 1902.

All persons concerned shall in obedience act accordingly. In testimony whereof We have signed this by Our own hand and let it be confirmed by Our Royal Seal.

Stockholm Castle the 10th May, 1901.

O s c a r.  
(L. S.)

L. Annerstedt.

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